



Université de Montréal

**Communal Conflict and the Geopolitics of Land Tenure,  
Social Identity and Statehood in North Kivu  
(Democratic Republic of the Congo)**

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Cette thèse intitulée:

Communal Conflict and the Geopolitics of Land Tenure, Social Identity and Statehood in  
North Kivu (Democratic Republic of the Congo)  
Conflits communautaires et la géopolitique du régime foncier, de l'identité sociale et du rôle  
de l'état au Nord Kivu (République Démocratique du Congo)

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## Résumé

Cette thèse propose une analyse géopolitique des conflits fonciers au Nord-Kivu (RDC). D'un point de vue rapproché basé sur des entrevues et des enquêtes par questionnaire sur les conflits fonciers dans les régions rurales, la thèse procède à une analyse des liens entre la propriété foncière, les systèmes fonciers en place et les conflits fonciers qui les entourent, d'un côté, et les conflits intercommunautaires, civils et interétatiques, plus visibles et plus étudiés, de l'autre. L'analyse démontre que la propriété foncière et les droits de propriété sont au cœur des conflits du Nord-Kivu. La thèse démontre également que la conception et l'application des systèmes de propriété foncière successifs du Congo ont engendré et aggravé des tensions quasi permanentes ainsi que des conflits récurrents autour de la possession des terres et autour des identités sociales. En particulier, elle établit que cela a nourri des tensions géopolitiques de longue date dans les quatre territoires du sud du Nord-Kivu qui, dans l'histoire récente, ont éclaté à plusieurs reprises en guerres civiles et interétatiques.

**Mots-clés :** Regime foncier, conflit foncier, identité sociale, relation inter-communautaire, conflit inter-communautaire, le rôle de l'état, Nord Kivu, Congo

## **Abstract**

This thesis offers a geopolitical analysis of land tenure and land tenure conflict in North Kivu (DRC). From a close-up perspective based on interviews and survey questionnaires concerning land tenure conflicts in the rural areas of the province, the thesis proceeds to analyse links between land tenure, the existing land tenure systems and conflicts over land tenure, on one side, and the region's more visible, and thus also more studied, communal, civil and interstate conflicts, on the other. On a first level of analysis, the thesis shows how the design and application of the Congo's successive land tenure systems have affected longstanding inter-communal tensions and recurring conflicts over land tenure and social identities. On a second level, the thesis also shows how this has nurtured intense geopolitical tensions in the four southern territories of North Kivu that have erupted on several occasions in recent history into communal, civil and interstate wars.

**Keywords:** Land tenure regime, land tenure conflict, social identity, inter-communal relations, communal conflict, statehood, North Kivu, Congo

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# List of Symbols and Acronyms

<b>ACODRI</b>	<i>Action Communautaire pour le Développement Rural Intégré</i>
<b>ACOGENOKI</b>	<i>Association Coopérative des Groupements d'Eleveurs du Nord –Kivu</i>
<b>ADF-Nalu</b>	<i>Allied Democratic Front – National Army for the Liberation of Uganda</i>
<b>ANAMAD</b>	<i>Association Nationale des Mamans pour l'Aide aux Déshérités</i>
<b>APCLS</b>	<i>Alliances des patriots pour un Congo libre et souverain</i>
<b>APREDECI</b>	<i>Action Paysanne pour la Reconstruction et le Développement Intégré</i>
<b>AFDL</b>	<i>Alliance des Forces Démocratiques pour la Libération</i>
<b>AU</b>	<i>African Union</i>
<b>BIP</b>	<i>Brigade d'Intervention Populaire</i>  The BIP was the armed wing of the CNDP and basically constituted the former 81 <sup>st</sup> and 83 <sup>rd</sup> brigades of the DRC's national armed forces before the CNDP rebellion
<b>CEPGL</b>	<i>Communauté Économique des Pays des Grands Lacs</i>
<b>CNDP</b>	<i>Congrès National de la Défense du Peuple</i>
<b>CNKi</b>	<i>Comité National de Kivu</i>  The CNKi was a chartered company that in 1928 received the exclusive rights to administer the lands of the Province of Kivu. The CNKi remained the principal intermediate between the colonial state and colonial settlers in search of land in the Kivu region.
<b>CNS</b>	<i>Conférence Nationale Souveraine</i>  The CNS was a proto-parliament without legislative competence that was assembled in 1991 under the Mobutu regime.
<b>ETDc</b>	<i>Entité Administrative Décentralisée</i> the designator of the DRC's lower administrative units that are legally incorporated and headed by a customary chief
<b>ETDco</b>	<i>Entité Administrative déconcentrée</i> the designator of the DRC's lower administrative units that are not incorporated as legal person and that are headed by a designated delegate of the central state
<b>EIC</b>	<i>État Indépendant du Congo</i>
<b>FARDC</b>	<i>Forces Armées de la République Démocratique du Congo</i>
<b>FAR</b>	<i>Forces Armées Rwandaises.</i>

<b>FAZ</b>	<i>Forces Armées Zairoises</i>
<b>FDLR</b>	<i>Forces Démocratiques pour la Libération du Rwanda</i>
<b>FPR</b>	<i>Front Patriotique Rwandais</i>
<b>HCR-PT</b>	<i>Haute Conseil de la République – Parlement de Transition</i>
<b>ICCN</b>	<i>Institut Congolais pour la Conservation de la Nature</i>
<b>IDP</b>	<i>Internally Displaced Persons</i>
<b>LDF</b>	<i>Local Defence Forces</i>
<b>M23</b>	<i>Mouvement du 23 mars</i>
<b>MDR-Parmehutu</b>	<i>Parti Démocratique Républicain – Parti du Mouvement de l’Emancipation Hutu</i>
<b>MLC</b>	<i>Mouvement pour la Libération du Congo</i>
<b>MONUC</b>	<i>Mission de l’ONU au Congo</i>
<b>MONUSCO</b>	<i>United Nations Organisation Stabilisation Mission in the DR Congo</i>
<b>MPR</b>	<i>Mouvement Populaire de la Révolution</i>
<b>MRND</b>	<i>Mouvement Révolutionnaire Nationale pour la Démocratie</i>
<b>MRLZ</b>	<i>Mouvement Révolutionnaire pour la Libération du Zaïre</i>
<b>NGO</b>	<i>Non Governmental Organisation</i>
<b>NRC</b>	<i>Norwegian Refugee Council</i>
<b>OAU</b>	<i>Organisation of African Unity</i>
<b>PNVi</b>	<i>Virunga National Park</i>
<b>PPRD</b>	<i>Parti du Peuple pour la Réconstruction et le Développement</i>
<b>RCD</b>	<i>Rassemblement Congolais pour la Démocratie</i>
<b>RCD-GOMA</b>	<i>Rassemblement Congolais pour la Démocratie – Goma</i>
<b>SYDIP:</b>	<i>Syndicat de Défense des Intérêts Paysans</i>
<b>UDPS</b>	<i>Union Démocratique pour le Progrès Sociale</i>
<b>ULPGL</b>	<i>Université Libre de Pays des Grands Lacs</i>
<b>UN-Habitat</b>	<i>United Nations Human Settlement Program</i>
<b>UNHCR</b>	<i>United Nations High Commissioner for Refugees</i>

## **Dedication**

*I dedicate this work to my wife Evelyne and to our daughters Delphine and Romy Louise.*

## Acknowledgements

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# 1 Introduction

The violent conflicts that shook the Democratic Republic of Congo (DRC) and the African Great Lakes region during the millennial decade have burnt themselves into the public image as shocking examples of state failure and social and political disintegration in Sub-Saharan Africa. But despite the crisis' near-continental scale and its decades-long protraction, the global interest remained ephemeral. In fact, public attention had largely waned by the time the conflicts in eastern DRC generated their largest numbers of victims. But even this brief span of global attention sufficed to cast to the world an image of the DRC that is spiked with references to wartime atrocities, sexual violence, ethno-tribal bigotry and predatory resource exploitation. Doubtless, neither the world's appalled dismay nor its forgetful apathy does justice to the Congo, its cultures and its social conflicts.

The early post RCD war conflicts in North Kivu have been the subject of several research papers mostly during the first post-war decade. Most of this research has focused in one way or another on either one or a combination of the following three themes: Violent actor multiplication in the face of inclusive peace agreements and democratic transition, the enrichment of violent state and non-state actors through illicit resource exploitation in mineral rich conflict zones and the establishment of buffer zones and extraterritorial areas of influence by competing regional states.

This thesis incorporates several key elements of all these narratives; but its principal purpose is to produce its own narrative of a key theme of rural conflict in North Kivu and adjacent regions that has failed to attract sufficient scholarly attention. Indeed, our thesis shows how competitions for farmland are very much at the center not only of ongoing rural conflict, but also of the wider security landscape that encompasses North Kivu, the DRC and several of its eastern neighbours.

The doctoral thesis draws some of its inspirational roots from a master's thesis that I have produced to the geography department of Université Laval, Quebec City in 2007. The Master's thesis (Pottek, 2007) had analyzed ethno-tribal relations in light of ongoing conflicts in the immediate aftermath of the RCD war and the so-called democratic transition phase that followed. The thesis had concluded that competitions for farmland represented key elements

in defining both intra- and inter-communal relations in the post-war era, but it ended short of analyzing land tenure conflicts per se.

Meanwhile, several local and international authors have published more complete studies that corroborate and expand findings that link land tenure to communal and civil conflicts. Some of the most pertinent works have identified disputes and conflicts over land tenure as key elements in greater nexuses of ethnic, civil and interstate strife including the two successive hecatombs known as AFDL and RCD wars. But despite a growing consensus on the centrality of the land issue to local and regional conflict landscapes, very few authors have actually drilled down into the rural basis of the grassroots conflicts. By consequence, rural events of conflict in North Kivu and the associated stakeholder constellations remain widely uncharted.

In response to these identified shortcomings in the existing literature, this thesis scales its immediate analysis down to competitions, disputes and conflicts for land at the individual household, neighbourhood and village levels. Concordant with this objective, much of the fieldwork has been carried out squarely in those places, where rural rivalries for land are negotiated, i.e. in villages and a few semi-urban areas dispersed throughout the sub-regions that are commonly identified as epicenters of conflict in eastern DRC: the territories of Masisi, Rutshuru, Nyiragongo and eastern Walikale. Hereby, the thesis attempts to fill some of the analytical gaps in the social and geopolitical understories of regional conflict that the conventional, often *head-heavy*, i.e. state capital-focused conflict studies tend to leave void.

The originality of this study lies thus in its grassroots level approach to fieldwork in geopolitical conflict analysis. But the study's conclusions would remain isolated case study contributions if they were not embedded into thorough local, regional, historical and contemporary geopolitical context analyses. Thus, whereas this thesis' original research focus are the tenure conflict affected villages and towns in North Kivu, the second principal purpose of the study is to understand how the observed rural conflicts interact with much more visible, and therefore much more studied, large-scale conflict events.

Thus, this thesis' first level of interest is recent and ongoing rural conflict over land tenure in North Kivu. In its study of the latter, the thesis employs original fieldwork in the

form of in situ documentary research, interview, questionnaire and case study analysis<sup>1</sup>, as well as non-participant observational elements. By consequence, the first level of the results discussion highlights the prominence of demographic pressure, relative land scarcity, competition, dispute and conflict over land tenure in North Kivu. The discussion provides questionnaire survey-based numerical estimates on the items that it explores: the prevalence of land shortage, tenure dispute and conflict involvement rates and the involvement of customary and governmental dispute and conflict arbitration, mediation and adjudication institutions in the avoidance and resolution of rural land tenure disputes and conflicts.

Possibly more importantly, the first part of the results discussion identifies and describes types of land tenure conflict. The resulting tenure conflict typology establishes eight categories of disputes and conflicts and their typological characteristics. The typology reveals key elements of the physical and human (ethno-demographic, socio-cultural, legal, administrative and political) geographies within which the tenure disputes and conflicts evolve, it provides detailed descriptions of the conflict types, brings examples from the field studies and adds questionnaire survey-based numbers on tenure dispute and conflict affectedness and involvement rates to the typology<sup>2</sup>. For the largest and most propagation-prone conflict types, the discussion also provides brief historical and geopolitical context analyses.

The thesis' second level of interest are interrelations between rural conflicts over land tenure and more visible and thus also more studied conflicts over social identities, ethno-tribal territories, economic and political resources and national state territories between larger social identity community-based, non-state armed groups-based (NSAG-based) and central state-

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<sup>1</sup> The fieldwork for the thesis comprised four case studies of tenure conflict. These however were published in an article (see Pottek et al, 2016) in the meantime. In order to avoid redundancy, the case studies are not presented in the thesis. However, several of the case study results are used to underpin with real life examples the tenure conflict typology presented in Subchapter 7.1.3.

<sup>2</sup> As highlighted in the methodology Chapter 5 and repeatedly throughout the questionnaire survey results discussion Subchapter 7.1 the quantitative data from the questionnaire survey cannot be regarded as representative of North Kivu's entire population. This is because the cohort sizes from each of the surveyed locations were too small to bear representative statistical value. Establishing statistical representativity for entire populations was not the purpose of the questionnaire survey. The purpose was rather to provide numerical snapshots of several relevant tenure related issues from a range of locations distributed throughout some of the most conflict affected areas of the province.

based actors. The thesis posits that the design and application of successive Congolese land tenure systems had a key role to play in this multi-layered conflict nexus. The second-level discussion explores this role and demonstrates how the design and application of the Congo's successive land tenure systems have affected longstanding inter-communal tensions and recurring conflicts over land tenure and social identities and how this has nurtured intense geopolitical tensions in the four southern territories of North Kivu that have erupted on several occasions in recent history into communal, civil and interstate wars.

The thesis is subdivided into eight chapters. The first consists of this general introduction. The second provides a contextualized discussion of the key concepts. This is followed by the third chapter that highlights the thesis' disciplinary nature and discusses the relevant research literature. The fourth chapter presents the research problematic, the premises, research questions, the main hypothesis and five sub-hypotheses. The fifth chapter presents the research methods and the sixth presents a contextualised discussion of the study area.

The seventh chapter represents the thesis' main chapter; it presents the hypothesis discussion and it is subdivided into two subchapters. The first of which (Subchapter 7.1) discusses land tenure conflicts from close-up perspectives, it provides the questionnaire survey-based numerical snapshots of tenure competition, dispute and conflict and it presents the land tenure typology that is based in roughly equal parts on in situ documentary research, questionnaire analysis and interviews. Subchapter 7.1 is further subdivided into four subordinate subchapters, each of which discusses one of the first four sub-hypotheses.

The second hypothesis discussion in Subchapter 7.2 examines the fifth sub-hypothesis. The subchapter discusses land tenure conflicts within their wider social, cultural, legal, administrative, historical and geopolitical contexts, it analyses the role of the land tenure system in defining land tenure and inter-communal relations and analyses links between the different levels of conflict from disputes over rural tracts of farmland via communal conflicts over land, social identities and territory to the civil and interstate wars of the millennial decade. This section draws roughly equally on secondary literature and fieldwork results mostly from interviews, but also from the questionnaire survey and in situ documentary research.



Finally, the eighth and final chapter presents the final conclusion.

The current introductory chapter terminates with two cartographic representations (Figures 1 and 2). The first of which (Figure 1) situates North Kivu and the DRC in their regional geographical environments. The second of which (Figure 2) features North Kivu's physical relief and its main administrative sub-divisions, i.e. its territories and three major cities.

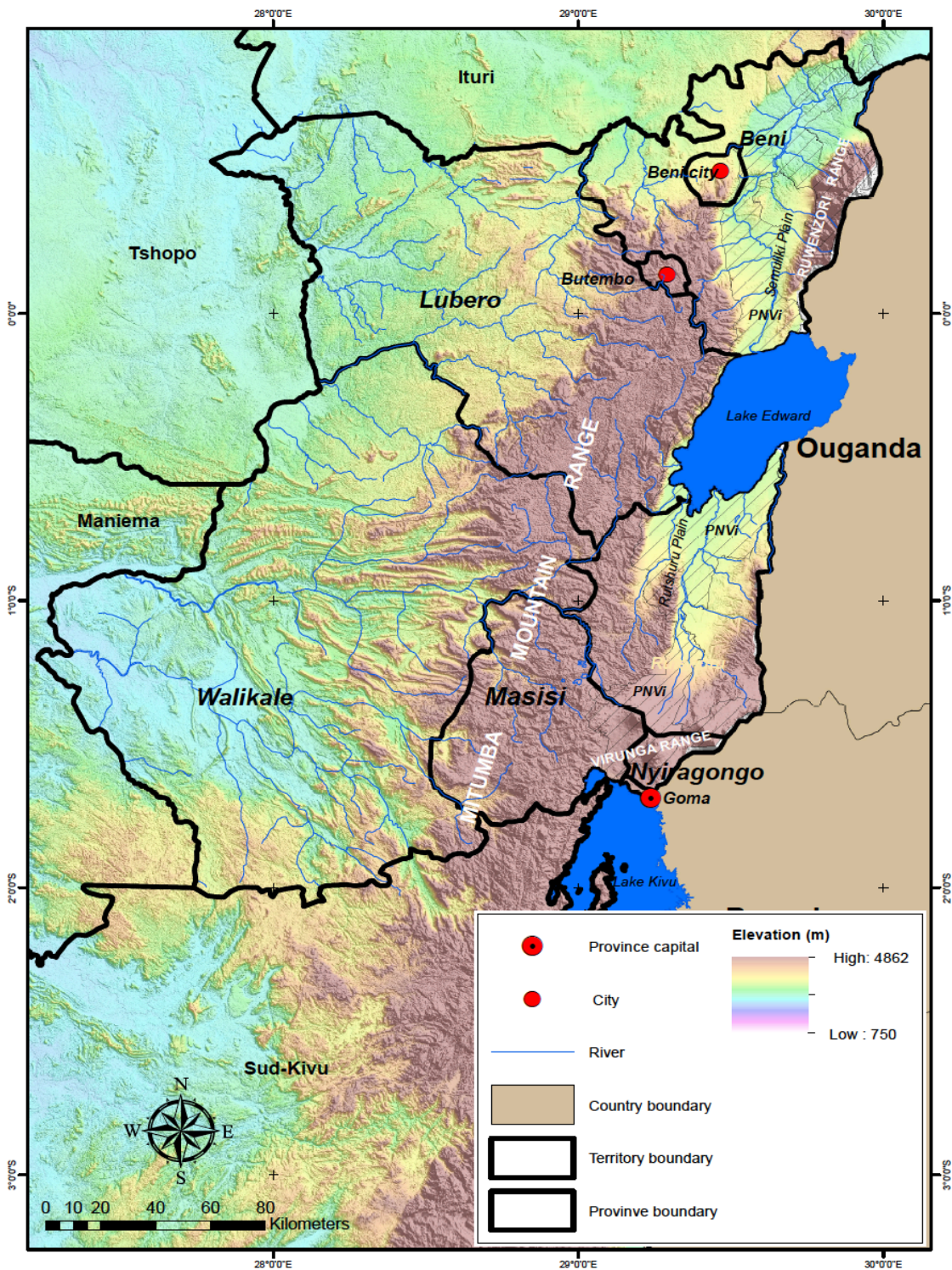
The purpose of these first two cartographic representations is to help the reader visualise the geographical setting of the research area at an early stage before the conceptual and methodological discussions of the following four chapters. More context-specific maps will be presented in the methodology discussion in Chapter 5, the geographical study area presentation in Chapter 6 and the hypothesis discussion in Chapter 7.



Map conception: Pottek, Codjia and Lafleur Guy (2016)

Sources: United Nations Organisation (2015) Map No. 4412, Rev. 18, United Nations, January 2015 (Colour), Department of Field Support, Cartographic Section; <http://reliefweb.int/map/democratic-republic-congo/democratic-republic-congo-monusco-august-2015>

**Figure 1.** Geographic Contextualisation of the Research Area



Map conception: Lubunga Mutingamo and Pottek (2017)

Data source: Lubunga Mutingamo, UN-Habitat (2017)

Cartographic source: Lubunga Mutingamo, UN-Habitat (2017)

**Figure 2.** Physical Relief and Territorial Boundaries of North Kivu

## **2 Definition and Contextualization of Key Concepts**

This chapter defines, discusses and contextualizes a series of key concepts that are essential to this thesis. Here, I would like to add a brief note of caution that the conceptual and theoretical frameworks of the thesis are fundamentally anchored in European social science traditions. Given that the thesis analyses an inherently socio-culturally informed African problematic, I concede that despite my best efforts to capture the voice of the grassroots level of rural land relations and social conflict in North Kivu, my analysis is inherently compromised by cultural barriers and hence, Eurocentrisms are bound to be present in my approach. With this caveat in mind, I will discuss the following eight groups of key concepts:

1. Rivalry, Competitions, Dispute Conflict and War
2. Community, Social Identity and Social Identity Theory
3. Theories of Ethnicity and their Relevance to North Kivu
4. The Ethnie, the Nation, the State and the Nation State: A Disambiguation
5. Theories of the State and Applications relevant to the Research Context
6. The Formal, Semi-Formal and Informal: Institutions, Customs, Norms and Social Capital
7. Clientelism, Political Patronage and Neopatrimonialism
8. Notions and Theories of Property, Land and Land Rights

### **2.1 Rivalry, Competition, Dispute, Conflict and War (and the North Kivu Context)**

As highlighted in the general introduction, this thesis is interested in links between land scarcity and conflict. But it is not the scarcity itself or its immediate social and socioeconomic repercussions that are the thesis' primary focus. Instead, it is the path of degradation or improvement that connects various stages on a continuum that leads from rivalry via competition and dispute to conflict and war. Unfortunately, there is a lack of conceptual clarity in the literature's use of these five, at their borders intrinsically related terms. This thesis certainly does not aspire to resolve the ambiguities once and for all, but it is necessary to

define the distinctions by which the thesis applies these terms. A first step in this direction lies in comparing etymologic and lexical definitions.

Firstly, the Online Etymology Dictionary (2017) draws the roots of the term *rivalry* of the Latin term *rivalis*, which means *of the same brook* as well as *neighbour, adversary in love* and *rival*. The Merriam-Webster Online Dictionary (2017) defines *rivalry* as *a situation in which people or groups are competing with each other*. The link between *rivalry* and *competition* goes both ways: *Competition* draws its roots to the Latin *competitio*, which means *rivalry*; and to *competere*, which means *to compete* (Online Etymology Dictionary, 2017). The Merriam-Webster Online Dictionary (2017) writes that *competition* is best described either as a *rivalry* or as a *contestation between rivals*. Hence, there is a passive and an active interpretation of *competition*. The passive interpretation describes the rivalry itself whereas the active interpretation describes the action of contesting as result of a rivalry. For the purpose of this thesis, both the active and the passive interpretations are of interest.

The passive form of *competition* refers to a *rivalry* between two or more parties that seek to achieve the same goal (see e.g. Bernstein and Gauthier, 1998). Hence, *rivalry* and the *passive form of competition* describe a latent situation in which rivalling interests oppose each other, whether or not these opposing interests ever collide. Hence, *rivalry* and *passive competition* say nothing about the goal or target of the interests, nothing about the individual or collective entity that holds the interests and, most importantly, they say nothing about how the rivalling interests are negotiated, or, in fact, whether they are negotiated at all.

For simplification purposes, this thesis will use the terms *rivalry*, *level of competition* or *competition level* when referring to the *passive form of competition*. Whereas rivalry and passive competition levels will be referred to in purely descriptive, i.e. non-numerical terms (we dispose of no means of quantifying these), the thesis nonetheless uses very broad descriptive markers of size. Hence, in a simplified analogy to practises in microeconomics (see e.g. Baye, 2009 and Bernstein and Gauthier, 1998) and constructivist international relations theory (see e.g. Wendt, 1999) this thesis will compare *high degrees of rivalries* or *high competition levels* to *low degrees of rivalries* or *low competition levels* in purely qualitative terms.

The active form of competition signifies the actual act or process of *competing*. Like the below discussed terms *dispute*, *conflict* and *war*, the active form of competition represents a way of negotiating or a contest. For the purposes of this thesis, *competition* refers to the act of negotiating a rivalry in a more or less cooperative way within an informal, semi-formal or formal institution that is explicitly designed as a frame for the negotiation process without the external assistance of arbitration, mediation or adjudication services. For example, in a capitalist system, the institutional frame for the unassisted and cooperative competition for resources, goods and services is a market (see e.g. Baye, 2009 and Bernstein and Gauthier, 1998), whereas the institutional frame for the cooperative competition for governmental power within a pluralistic democratic system is an election (Habermas, 1992; 1997).

The other three forms of contesting or negotiating a rivalry that are of relevance to this thesis are *disputes*, *conflicts* and *wars*. The term *dispute* is derived from the Latin term *disputare*, which means to *weigh*, *examine*, *discuss*, *argue* and *explain* (Online Etymology Dictionary, 2017). This contrasts with the term *conflict*, which is derived from the Latin term *conflictus* and means *struggle* and *quarrel* (Online Etymology Dictionary, 2017). And finally, the term *war* is derived via the French *guerre*, which means *war*, from the Old High German *werran*, which means *to confuse* and *to mix up* (Online Etymology Dictionary, 2017).

This thesis is interested by rivalries and by the way that these are negotiated. The rivalry types of interest include those over identities, material resources (and most notably land), space and power at different levels of society including the individual and different collective levels from individual farming households via rural clans, ethno-tribal communities, community and economic elites to governments and states and their political elites. The most important types of rivalry for this thesis analyses are individual and community level-competitions for farmland. This thesis employs the term *competition* wherever these rivalries are negotiated either within formal, semi-formal or informal markets or within patrimonial or neo-patrimonial networks that are constructed around customary or state elites.

The above paragraphs have outlined the distinctions between rivalries and different types of contestation. Possibly more difficult to sketch is the line that separates the types of contestations, namely disputes, conflicts and wars. Yevyukova (2004), for example, hints that much of the political science and conflict studies literature does more to obscure the dividing



lines between these concepts than to add clarity. However, there has been a noticeable tendency in the conflict studies literature (see e.g. Burton, 1990 and 1996; Menkel-Meadow, 1994; Tidwell, 2001 and Yevyukova, 2004) to converge towards a model proposed by Burton (1990), by which a *dispute* is characterised by clearly definable sets of interests, stakes and claims, by distinctly circumscribable stakeholders (or stakeholders groups) and a general disposition of stakeholders to negotiate or otherwise attain a viable resolution or settlement within pre-set formal, semi-formal or informal institutional frameworks of negotiation, arbitration, mediation and adjudication.

Conflicts, in contrast, tend to involve larger, less circumscribable stakeholder groups and complex, intertwined and often blurred patterns of interests, stakes and claims that may involve several layers of explicit or implicit non-negotiable issues. Hence, conflicts have shed their direct docking points for straightforward settlement or resolution. Worse, as hinted above, whereas dispute stakeholders genuinely seek settlement or resolution to the underlying competitions, conflict stakeholders may or may not. One possible reason for this could be that the conflict polemics have evolved such that they no longer reflect the underlying stakes. This tends to be the case when a conflict agent instrumentalizes the dispute for an unrelated agenda. The most intricate conflicts arise when important stakeholders profit from a perpetuation of the conflict itself (Burton, 1990).

Burton's (1990), disambiguation is widely applied in the conflict studies literature. However, while lauding his overall contribution, some authors such as Tidwell (2001) denounce that Burton (1990 and 1996) treats disputes and conflicts as all too clearly distinct and separate categories. For Tidwell (2001) the two concepts lie on one and the same continuous line, which, as he emphasises, makes their distinction so difficult in the first place. This thesis adopts Burton's (1990) dispute - conflict disambiguation together with Tidwell's (2001) image of a continuum. In fact, I would add that the continuum is even larger and also comprises competitions and wars at its two extremes.

The theoretical distinctions between competitions, disputes and conflicts have been highlighted above. It was also highlighted that the primary focus of this thesis are competitions, disputes and conflicts over land tenure on a first level, and their links to larger

communal and civil conflicts, as well as regional wars over other issues including social identities, political power, territory and geostrategic interests on another.

In broad conceptual terms, intense rivalries lead to active competitions. Competitions are carried out within formal, semi-formal and informal institutions that are designed to frame the competitions. However, badly managed competitions easily turn into disputes, and badly managed disputes easily turn into conflicts (Tidwell, 2001). And finally, conflicts can easily interlock with other conflicts, including communal, civil and interstate conflicts.

Transposed into the context of North Kivu, this translates into the following picture: Intense and rapidly growing rivalries over an increasingly scarce land base exist throughout much of North Kivu. These rivalries trigger harsh. The competitions, in turn, are negotiated in monetized land markets as well as within patrimonial and neopatrimonial networks that are built around customary and state elites. However, in large parts badly managed within their institutional frameworks, competitions over land have a tendency to evolve into disputes over land. Rivals in dispute engage in some kind of non-violent negotiation process in quest of a settlement or resolution. In North Kivu, different types of formal, semi-formal and informal dispute mediation and adjudication institutions frame these non-violent dispute negotiation processes. Such institutions include civil society, customary and state-sponsored mediation bodies as well as customary courts and state tribunals. However, if unmanaged or badly managed within or without these institutions, land tenure disputes have a tendency to evolve into land tenure conflicts. Conflicts are by their very nature characterised by a complex structure, a lack of effective institutional negotiation frameworks (*encadrement*) and/or a lack of dedication to reach a settlement or resolution by the involved parties. Hence, conflicts over land tenure are negotiated with other means including, most notably, the application of intimidation or physical force. The largest and/ or most violent of land tenure conflicts in North Kivu have a tendency to drive and interlink with other types of conflicts including communal conflicts, civil conflicts and in some recent cases also interstate conflicts.

Even by Burton's (1990) and Tidwell's (2001) already much more concise measures, the concept *conflict* comprises a huge bandwidth of meanings, which suggests additional categorisation. Indeed, conflicts can be categorised by size, the principle stake or by the involved stakeholders or stakeholder groups. Consequently, for the purpose of this thesis,



conflicts will be categorised in the scale category as either small, medium, large or very large scale. On a second level, conflicts will be categorised by the principle stake. For the purpose of this thesis, most of the conflicts are over land tenure, but conflicts over mineral and other resources as well as over identity, territory and political power are also examined. On a third level, conflicts are categorised by the principal stakeholders and stakeholder groups that are involved. And the stakeholder groups can, once more, be defined in different ways. For the purpose of this thesis, conflict stakeholder categorizations include cattle-raiser – cultivator conflicts (these will be referred to as *land use conflicts*), inter-communal conflicts (which include inter-clannish, inter-tribal and interethnic conflicts, but also cattle-raiser – cultivator conflicts if the latter are organised along ethno-tribal or similar socio-cultural community lines), class conflicts, civil conflicts and interstate conflicts. The most important of these conceptual sub-classifications will be defined in the following paragraphs.

The first level of distinction is size. This categorisation responds to a need to distinguish conflicts by size for the sake and clarity of the argument that is constructed in this thesis. Hence, the following categorisation based on scale was generated by the author exclusively for the purposes of this thesis:

Small-scale land tenure conflicts involve relatively small acreages that could feed zero to ten small<sup>3</sup> farmer households, the implication of two to ten directly involved contestant households, there are harsh verbal confrontations, possibly intimidation or low levels of violence, but no series of repetitive violent actions, no heavy bodily harm, no forced long-term population displacements or conflict-induced fatalities.

Medium-scale conflicts involve relatively large acreages that could feed several dozens of small farmer households, the implication of dozens of small farmer households or of individual customary authority, large landholder or state elites households, the use of intimidation, the forced displacement of individual families, the destruction of goods such as a small number of residences, parts of a harvest or herd of cattle, some level of serial or

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<sup>3</sup> For the purposes of this thesis I define small farmers as subsistence and semi-subsistence farmers as well as small concession-holders that dispose of no more than ten hectares of farmable land.

repetitive physical violence against humans but usually no and certainly not more than one or two conflict-induced fatalities.

Large-scale conflicts involve large acreages that could feed many dozens or hundreds of small farmer households, the implication of many dozens or hundreds of small farmer households and/ or representatives of powerful customary authorities, very large landholders and/or high-placed state elites, the broad use of intimidation, the forced displacement of many dozens or hundreds of families, important destructions of goods such as residences, harvests and/or cattle herds, serial and repetitive physical violence against humans with a large number of injuries and/ or several conflict-induced fatalities.

Very large-scale land tenure conflicts involve very large acreages that could feed many hundreds or thousands of small farmer households, the implication of many hundreds or thousands of small farmer households, the representatives of powerful customary authorities, very large landholders and high-placed state elites, the generalised use of intimidation, repetitive or permanent forced displacement of many hundreds or thousands of families, massive destructions of goods including residences, harvests and/or cattle herds, massive physical violence against humans with a large number of injuries and conflict-induced fatalities.

Just like disputes and conflicts are types of competition that I have decided to distinguish from the latter in the traditions of Burton (1990 and 1996) and Tidwell (2001) for clarity of argument purposes, war is a type of conflict that requires its own distinction.

Indeed, similarly to the scalar distinction between *small*, *medium*, *large* and *very large-scale conflicts*, the difference between *very large-scale conflicts* and *wars* rests squarely in size. And, in fact, there is a widely applied practise in conflict studies to distinguish between war and other types of armed conflict based on fatality rates. One of the most commonly referenced sources in this domain is the Correlates of War project (COW) by the University of

Michigan as described in Small and Singer (1982), Singer and Small (1994) and Sarkees (2000)<sup>4</sup>.

For the COW the benchmark that distinguishes between other types of armed conflict and war lies at 1,000 conflict-induced deaths. Sarkees (2000) and later publications by contributors to the COW project added the criterion that the 1,000 conflict-induced fatalities materialised within a one-year period. Several authors that apply or reference the COW data set such as Collier and Hoeffler (1998), Fearon and Laitin (2003), Collier and Hoeffler (2002) and Collier (2008) differentiate between war and one-sided events of massive violence such as massacres or genocides by adding a further criterion, namely that a war requires at least 5 or 10 percent of the battlefield deaths on each side<sup>5</sup>. This thesis follows their beaten path and defines (for its own purposes) *war* as a violent conflict that results in at least 1,000 conflict-induced deaths within a period of one year, with each counterparty sustaining at least 10 percent of the fatalities<sup>6</sup>.

As mentioned above, a second level of differentiation between conflicts is oriented on the principle stake of the conflict. The conflicts examined for the purposes of this thesis are mostly over land tenure and related issues, but conflicts over mineral and other resources as well as over identity, territory and political power are also examined.

And on a third and final level, conflicts are categorised by their principal stakeholders and stakeholder groups. For example, on numerous occasions, the thesis refers to *communal*, *inter-communal* and *intra-communal* conflicts. Elfversson and Brosche's (2012) define *communal conflicts* as violent conflicts between non-state armed groups (NSAGs) that

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<sup>4</sup> See also the Correlates of War website at <http://www.correlatesofwar.org/>.

<sup>5</sup> I would add a note of caution that precise fatality estimates can be rarely established in the rural conflicts of North Kivu and comparable rural war settings in Sub-Saharan Africa. However, the numerical definitions provide a useful distinction as an *order of magnitude* indicator that has the advantage of being used by a large number of conflict studies scholars, thereby offering an approximate size-related comparability.

<sup>6</sup> As briefly mentioned above, there are many different ways of evaluating the size of a conflict or war including by the involved stakeholder groups, involved combatants, military expenditures, combatant deaths, civilian deaths, total deaths, combatant, civilian or total deaths per unit of time such as a year, geographic extension of hostilities, duration of hostilities, etc. (see e.g. Collier et Hoeffler, 2001). None of these criteria represent straightforward measures. For the purposes of this thesis, defining a war based on total fatality rates per year appears as the most practical method despite the arbitrariness of the established benchmark number and despite the difficulty of accessing precise data on conflict-induced fatalities in mostly rural-based African conflicts.

organize along shared community identities. This thesis adopts Elfversson and Brosche's (2012) definition, but it will mostly refer to the authors' conceptualization of *communal conflicts* as *inter-communal conflicts* in order to draw an as clear as possible line between, for example, land tenure conflicts that are carried out mostly inside one and the same ethno-tribal community (*intra-communal conflicts*) and those that are carried out mostly between members of different ethnic communities (*inter-communal conflicts*).

An important type of conflict in the context of North Kivu and the wider DRC is *civil conflict*. The relevant criterion for a conflict to qualify as *civil conflict* is the involvement of state actors: The central state represents at least one of the main conflict parties. A *communal conflict* becomes a *civil conflict* if the central state becomes involved not as a peacekeeper or referee, but as an actively fighting force.

A different type of stakeholder conflict category that plays a much less prominent role in the thesis than *communal* or *civil conflict*, but that is nevertheless discussed on a few occasions and is of some conceptual importance is *class conflict*. In historical materialist conceptualizations (see e.g. Marx and Engels, 1846; 2016 and 1848; 1986 for an orthodox interpretation; see also Wallerstein, 1986 and 2004 for more recent reinterpretations), latent class struggles and open *class conflicts* are historical constants that oppose each societies' subservient social classes of actively toiling producers (peasant farmers, artisans, industrial workers etc.) to a classes that own or control the societies' means of production (feudal lords, entrepreneurs, industrial capitalists, feudal and later capitalist state elites etc.), with the toiling classes fighting to appropriate the means of production and inverse the social order and the dominant classes fighting to sustain the status quo. Outside of Marxism and more recent interpretations of historical materialism *class conflict* is commonly more generally regarded as a redistributive conflict in which a society's economically *underprivileged* seek to redistribute the assets of which the society and all its members dispose in a more or less egalitarian way (see e.g. Weber, 1922; 2002 and Parsons, 1949). For the purposes of this thesis, it appears useful to adopt the second, less rigid and less ideological definitions of *class* and *class conflict*.

Statewide or near-statewide scale conflicts along more or less clear class lines have never been recorded in the history of the DRC or its predecessor states. Similarly, even on a

much smaller scale, the land tenure conflicts that this thesis examines are rarely fought along clearly identifiable class lines. However, several of these conflicts do have class conflict elements. An interesting argument of a recent work by Boone (2014) is that the politico-administrative design of the DRC and its land tenure system serve as a relay to remodel spawning class conflicts into communal conflicts that follow established ethnic, ethno-tribal or other socio-cultural community-defined fault lines. This argument will be discussed in some detail in the discussion Chapter 7 of the thesis.

In contrast to communal conflicts in their purest form, class conflicts in their original, historical materialist conceptualization ultimately represent a sub-category of *civil conflict* as they oppose the subservient class to the dominant class that, in historical materialist rationale *owns* the state or uses the latter as a tool of domination. However, as discussed above, in less structural interpretations, *class conflict* describes any redistributive conflict between a society's privileged and underprivileged (Weber, 1922; 2002). Hence, for the purposes of this thesis, *class conflict* can but must not represent a *civil conflict*.

Finally, the last, most studied and therefore least ambiguous of all conflict categories is *interstate conflict*. To qualify as the latter, at least two formally sovereign members of the interstate system confront each other in conflict (Sarkees, 2000).

In a second step of analyzing conflicts, conflict classifications can be combined. For example, combining stake and stakeholder conflict classifications allows, for instance, the conceptualization of *inter-communal* or *intra-communal land tenure conflicts*. The same applies to combinations that include size classifications. Hence, a conflict can be classified as a *medium-scale inter-communal land tenure conflict*. As discussed above, the largest violent conflicts are classified as wars. And, as elsewhere, the war (size) classification can be combined with stakeholder and stake-based classifications. Such that, for example, a war that is fought primarily over territorial aspirations between two or more formally sovereign members of the interstate system would be referred to as a territorial interstate war.

And as indicated above (see Small and Singer, 1982; Singer and Small, 1994 and Sarkees, 2000; as well as Collier and Hoeffler, 1998, 2001 and 2002; Fearon and Laitin, 2003; Collier, 2008; and Elfvorsson and Brosche, 2012), there exist certain (not entirely uncontested

and somewhat *still-in-the-making*) conventions in the established conflict studies literature that serve as benchmarks for most of the above classifications of conflict. The following war-size conflict sub-classifications are frequently referenced in the conflict studies literature and will also be applied in this thesis:

As highlighted above, a large-scale violent conflict is considered a war if it causes at least 1,000 fatalities within one year and at least two involved parties sustain each more than 10 percent of the total 1,000 or more fatalities. A communal war is a war-sized violent conflict that involves non-state armed groups that organize along shared community identities. A class war is a class conflict that reaches the above-described war scale. And a civil war is a war-sized violent civil conflict to which the central state contributes at least 1,000 armed troops and sustains at least 100 fatalities. An interstate war is a war-sized interstate conflict and an internationalized war is a war-sized violent conflict in which at least three members of the international state system contribute each at least 1,000 armed troops, sustain at least 100 conflict-induced fatalities and, as with any other war, the total number of conflict-induced fatalities within a one-year period is at least 1,000 (Sarkees, 2000).

The outlined grill of conflict categorisation provides a helpful benchmark in the analysis of conflict in North Kivu, the DRC and the wider region of Great Lakes Africa. However, an important point of caution, as I will highlight in more detail throughout the main corpus of the thesis, is that “*on the ground*”, the borders that separate communal, class, civil and even interstate conflicts and wars are oftentimes blurred. This is because conflict actors can be difficult to identify, or because they carry multiple conflict-relevant social identities or just as many different “*stakeholder hats*”. For example, conflict actors could be part of an ethnic militia and simultaneously members of the state police or state military; similarly members of the state military can act as mercenaries for land tenure stakeholders or for ethnic militias; or vice versa, ethnic militias can act as mercenaries for land tenure conflict stakeholders, or even for parallel structures in the national military. And finally, neighbouring states’ militaries can be dispatched without uniforms into the DRC and participate in communal conflicts or in conflicts over land tenure or other natural resources. Rumours and allegations over such and similar conflict constellations have abounded in North Kivu for decades. (It is therefore oftentimes difficult to decipher the stakeholder landscapes and

therefore also to classify conflicts according to the three categorization levels discussed above. Nevertheless, the categorization grill provides an important point of departure in our analysis of conflict in North Kivu, the DRC and Great Lakes Africa.

## 2.2 Community, Social Identity and Social Identity Theory

**Social Identity and Social Identity Theory:** The term *social* is derived from the Latin *socius*, which means *companion*, *ally* or *associate* and refers to *the interaction of the individual and the group* (Merriam-Webster, 2017). The same lexical work derives the term *identity* from the Latin combination *idem et idem* which means *same and same* and defines *identity* as the *distinguishing character of an individual and the relation established by psychological identification*. As a first step in conceptualizing social identity it appears appropriate to contract and associate the two lexical definitions and define the composite term as the *distinguishing character of an individual established by psychological identification through the interaction of the individual with a group*<sup>7</sup>.

The above definition aligns with a conceptualization of social group identity as proposed by *social identity theory* (see Tajfel, 1982 and Tajfel and Turner, 1986). *Social identity theory* builds on the *self-esteem hypothesis*, by which all humans are engaged in a quest for a positive conceptualization of the *self* via a sense of positive distinctiveness (Rubin and Hewstone, 1998). In *social identity theory*, a positive self-concept is in large part built on a positive conceptualization of one's social group identities. Social group identities, in turn, are built on memberships in social groups from the micro to the macro level including families, sports teams, social clubs, socio-economic and occupational communities, commercial enterprises, political parties, social classes, clans, tribes, ethnies, nations, state citizenries etc. Each social group membership and the interaction between its members bears fruit to or influences a distinct social identity.

The process by which social group identities are constructed follows a schema of social categorization, social identification, social comparison and demarcation between the

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<sup>7</sup> Within the vast field of identity studies in psychology, this thesis' concern is limited to social group identities and their relevance to socio-political and geopolitical processes in our research field.

individual and members of her social *in-groups*<sup>8</sup> and those of social *out-groups*. In order to build a sense of *positive distinctiveness*, the members of social groups tend to idealize, emphasize, exaggerate and idealize the commonalities and shared traits of the in-group while also emphasizing and inflating the groups' differences or distinctions from perceived commonalities held by members of out-groups. The exaggeration of group-specific traits thereby leads to both the formation of a sense of *positive distinctiveness* and the hardening of a group's outer boundaries (Tajfel, 1982; Tajfel and Turner, 1986). For Tajfel and Turner (1986), the human quest for positive distinctiveness incites individuals into building a multitude of social identities. Consequently, every individual disposes of several social identities that interact at different levels with his personal identity.

The closely related *minimal group paradigm* holds that in her quest for a positive distinctiveness, the individual may easily identify stronger with the idealized and exaggerated group qualities or commonalities than with the actual personalities of other in-group members. This, in turn, creates potentially strong group alliances even within anonymous groups, i.e. within groups of which the individual members are unknown to each other (Rubin and Hewstone, 1998).

Tajfel and Turner's (1986) *social identity theory* rightly emphasizes socio-psychological processes of social identity-formation. However, other approaches to social identity also emphasize the roles of history (historicism), as well as utilitarian aspects (instrumentalism) in the formation of such identities. As I will discuss in some detail in the following subsection on ethnicity, this thesis incorporates elements of all these three distinct approaches: Social group identification processes draw on both socio-psychological and utilitarian motives in ever-changing proportions. It is important to note, however, that while responding to evolving socio-psychological and utilitarian needs and motives, socio-cultural community identities (i.e. the socio-culturally and politically informed social identities of larger groups) have a tendency to build on pre-existing, oftentimes long-established (historical) patterns of social identity formation (Young, 1976).

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<sup>8</sup> In Tajfel and Turner's (1986) terminology an *in-group* is the group of which the individual is a member whereas the *out-group* can be either narrowly defined as a similar, competing social group, or more broadly defined as a group that comprises all non-members of the *in-group*.



The term *community* is derived from the Latin term *communitas*, which means fellowship and community. Its roots lie in the term *communis*, which means *common* (Barnhart, 1988). Babcock Gove (2002; p. 460) defines community as *a body of individuals organized into a unit with the awareness of some unifying trait*. Clark (1985) describes a community either as a group of people living in a particular area, a group of people living near one another with distinct social relationships or a group of people sharing a common faith, culture, profession, or life-style.

In adopting the above definitions, this thesis perceives *social community* as a group of individuals that are defined by shared traits such as geographical residence or origin, common spiritual practices or a common faith, culture, profession or life-style, but also by an awareness of the shared traits and their combined social community-forming character. Thus, the identity of a social community<sup>9</sup> is intimately linked to the social identity that it spawns in its members and associates. Hence, a community is, indeed, a type of social group as described by Tajfel (1982) and Tajfel and Turner (1986), its only distinctiveness lying in size. Whereas Tajfel and Turner's (1986) *social group* may consist of any number of individuals from the intimate circle of a nuclear family right up to the anonymous community of an ethnic group or a nation, a *community* is generally understood to be large enough to comprise anonymous membership. Also to be noted is that just like an individual tends to dispose of a multitude of social group memberships and associated group identities, he also tends to be member of numerous communities and therefore ascribe to more than one community identity.

Given this thesis' occupation with conflict between variously defined communities over social identity, land, socio-economic, political and other resources, our interest is particularly drawn to those types of communities that play, in one way or another, active or passive key roles in communal conflicts in North Kivu. In more explicit terms, it is particularly concerned with social communities that are defined by an inherited or acquired socio-economic, professional, occupational or livelihood related lifestyle (*occupational*

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<sup>9</sup> Our conceptualization of a community represents a larger (meso- or macro-level) example of Tajfel and Turner's (1986) social identity-spawning *in-group*, i.e. an *in-group* at, for instance, the village, tribe, ethnic, regional or national level.

*communities*<sup>10</sup>), the membership in a clan (*clannish communities*) or a tribe-like community (*tribal communities*<sup>11</sup>), the affiliation with an *ethnie* (*ethnic communities*<sup>12</sup>), a group of claimed regional origin (*regional origin communities*) or a nation (*national communities*<sup>13</sup>), the mastery of a language (*linguistic communities*) or the citizenship in a state (*citizenry*<sup>14</sup>).

## 2.3 Theories of Ethnicity and their Relevance to North Kivu

The term *ethnicity* means ethnic quality or affiliation and is a derivation from the Greek term *ethnos*, which translates into *nation*, or *people* (Barnhart, 1988). This translation sets the term into semantic proximity with the *nation*, which I will discuss later in this subsection. Like its relative the *nation*, the *ethnie* is a community defined by socio-cultural identity. Scholars in sociology and political anthropology offer different interpretations of ethnicity, the most prominent of which are associated with either one of the following three approaches: objectivist, constructivist or instrumentalist (Barnard and Spencer, 2002).

Objectivists regard ethnic identity as empirical, objectively observable and distinctly definable. But this is where the common ground ends. Under the umbrella of *objectivism* thrives a broad splay of very distinct sub-categories. For *socio-biologist* or *raciological primordialists*, genetic inheritance-derived factors constitute the dominant root of ethnic differentiation (*ethnicity* is defined *in the blood* or *in the genes*). These interpretations have never leaned on scientific substance and they are rightly shunned by most of the academic literature.

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<sup>10</sup> Prominent examples of occupational communities in rural North Kivu are sedentary agricultural communities versus nomadic or transhumant cattle herding communities versus hunter-gatherer communities, or again, subsistence agriculture-based versus commercial farming-based communities.

<sup>11</sup> Tribal communities are circumscribed by the membership in a tribe. A definition of the *tribe* in the socio-political context of North Kivu will be provided in a following subsection of the conceptual discussion.

<sup>12</sup> In following the tradition of Smith (1986), this thesis makes frequent use of the term *ethnie*, which is an import from the French language. The term *ethnie* simply means *ethnic community*. A definition of terms related to the *ethnic* will be provided in a following subsection of the conceptual discussion.

<sup>13</sup> A definition of terms related to the *nation* will be provided in a following subsection of the conceptual discussion.

<sup>14</sup> A definition of various terms related to the *state* will be provided in a following subsection of the conceptual discussion.

Nonetheless, *raciological* interpretations of ethnicity are briefly discussed here because not only have they informed colonial era metropolitan policies towards their colonial subjects in the first half of the 20<sup>th</sup> century, but their vestiges have very much endured in both popular myth and political instrumentalisation up to this day. In fact, central elements of raciology and socio-biology have been recurrently recycled in derivatives of the so-called *Hamitic hypothesis* (*Hamitic myth*)<sup>15</sup> and in various ethno-political ideologies that are linked to the latter in one way or another. More importantly, various derivatives of the *Hamitic myth* continue to impregnate the ideologies and political programs of ethnically defined militias, rebel armies and political parties in Central and Great Lakes Africa until this very day<sup>16</sup>. The role of the *Hamitic myth* and thereof derived theories and political messages in the geopolitics of the DRC and surrounding regions will be discussed in the main discussion section of the thesis of the thesis.

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<sup>15</sup> The *Hamitic hypothesis*, or *Hamitic myth* as it is more correctly now oftentimes labeled, is the product of an unlikely amalgamation of 19<sup>th</sup> century European racial anthropology, Social Darwinism and Old Testament exegesis. The hypothesis attempts to explain pre-colonial socio-political hierarchies in the African Great Lakes region and Eastern Africa as a product of the subjugation of Bantu, Nilotic and Pygmy (Mbute) populations by in-migrating *Hamitic* tribes from northeastern Africa that are said to ultimately draw their roots to one of the *ten lost tribes* of biblical Israel. The ostensibly invading *Hamites* were wrongly assumed to be the first to have introduced ferrous metallurgy and sophisticated artisanship as well as comparably complex political systems (such as the Hima kingdom in Uganda and the Tutsi kingdoms in Rwanda and Burundi) to the region (see e.g. Seligman, 1930; 1959 for a proponent of the *Hamitic hypothesis* and Sanders, 1969, Vansina, 2001, and Chretien, 2006 for a series of refutations). As descendants of Semitic tribes, the *Hamites* represented distant relatives of European Caucasians. In accordance with 19<sup>th</sup> and early 20<sup>th</sup> century theories on racial anthropology and Social Darwinism, the ostensible semi-Caucasian African *Hamites* were regarded as racially and culturally superior to African Bantu, Nilotic and Pygmy populations. As a consequence, ethnic and ethno-tribal groups that were regarded as representatives of Hamitic culture were privileged in the indigenous sub-hierarchies of several colonial administrations.

<sup>16</sup> More recently, in what may be described as an unsound reversal of history, inverted interpretations of the *Hamitic myth* have been recycled in *Hutu Power* and *Bantu-Power* ideologies. In this inversion of history, *Hamites* and other presumed non-Bantu populations are defamed as hostile invaders, *social parasites* and *cockroaches* that should be expelled from the *Bantu lands* including the African Great Lakes region or even exterminated (see e.g. Ngeze, 1990, 1990 and 1993, the *Hutu Ten Commandments* and other publications of the Rwandan *Kangura* magazine (1990 – 1994), the broadcasts of the *Radio Television Libre des Mille Collines* (RTLNC, 1993 – 1994) and the *Hutu Power* propaganda of the Rwandan MRND regime that was ousted from power in 1994 and of which thousands of low-, mid- and top-level representatives fled into the DRC's Kivu provinces). Common to radical ethnicist re-interpretations of the *Hamitic myth* is that ethnicity is racially defined and that racial purity and racial hierarchy are central attributes of social order. The *Hutu Power* ideology and its inversion of the *Hamitic myth* therefore draw on and re-accentuate key elements from Gobineau's (1855; 1999) racial theory of Social Darwinism, as well as on National Socialist *blood and soil* ideology. The complete lack of scientific foundation in *scientific racism* has not diminished its appeal to certain established political cultures, amongst others, in Central and Great Lakes Africa. The thesis will return to a discussion of the *Hamitic myth* and its role in domestic and regional geopolitics in its results discussion Chapter 7.

In contrast to the *racial-biologic* variants, non-biologic, i.e. *sociologic* primordialism leans on sociological and cultural factors and, to varying degrees, on the relevance of time. An important example is *perennial primordialism* that emphasizes hereditary elements of language acquisition, culture and associated social norms in ethnic identities. To *perennialists*, the linguistic and cultural parameters that define ethnic and national identities are quasi-permanent as they are perennially preserved and passed from one generation to the next (see e.g. Herder, 1791; 1995). In contrast, historicist primordialists (see e.g. Connor, 1993) believe in the power of common experiences in continuously evolving histories as forming agents of ethnic group identities. For historicists, ethnic group identities are far from static; but their evolution is slow and usually spans generations.

Consistent with historicists, social constructivists recognize the significance of inherited cultural traits and history to ethnic and other social identities. However, there are two substantial distinctions. These lie firstly, in the constructivist appreciation of the subjective level, i.e. in the individual's active role in ethnic and other social identity formation processes and secondly, in the different weighting of time. Indeed, for constructivists, social identities are essentially relational and as such, they are constantly created, repeatedly recreated and modified through social interactions. In an early constructivist definition, Berger and Luckmann (1966) define social identities as comparably stable, role-specific understandings and expectations of the *self* that are acquired through participating in collective and therefore *social* undertakings. Furthermore Berger and Luckmann (1966, pp. 111) write that ... *identity, with its appropriate attachments of psychological reality, is always identity within a specific, socially constructed world.*

Berger and Luckmann's (1966) constructivist approach to social identity is further developed in Tajfel and Turner's (1986) *social identity theory*. A basic tenet of the latter is that people construct social identities through relations and interactions with social groups. Social groups are necessary for social identity formation because identities are constructed in socio-psychological processes of association (with in-group members) and demarcation (from out-group members). Identity-forming social groups can ultimately be defined by any set of commonly shared denominators.

Ethnic communities, as this thesis will illustrate, can be defined by a large spectrum of socio-cultural, linguistic, genealogic, socio-economic, occupational, lifestyle-related, regional-geographical and *racial-biologic*<sup>17</sup> denominators. The broad spectrum of potentially ethnicity-defining traits implies that people may dispose of several *latent* ethnic identities. The weighting of these *latent* identities, depends on a list of environmental (socio-political, socio-cultural, socio-economic and historical), as well as personal (socio-psychological and utilitarian) factors (see e.g. Banton, 1997). Taken together, this means that ethnicities are multilayered social identities that are both endogenously and exogenously constructed; they are variable and can be either next-to static or quite dynamic in their variability. The dynamism of ethnic identities, in turn, is determined by a range of socio-psychological, environmental and utilitarian factors that are themselves contextually defined.

**Instrumentalism and Ethnicity:** Instrumentalist views of ethnicity principally reflect constructivist interpretations with an extended focus on utilitarian aspects: Ethnicity has roots in a group's historical and cultural traditions, but it is essentially constructed or at least remodeled to serve the material or political interests of the remodeling agent. The two competing aspects of the instrumentalist interpretation are well summed up by Wolff (2006, pp. 36-37), who writes that whereas ethnicity is ... *something that has roots in a group's culture, and historical experiences and traditions...* it constitutes *foremost a resource in the hands of leaders to mobilize followers in the pursuit of other interests.*

Common to all instrumentalists is the tenet that ethnicity is a powerful tool for political instrumentalization. Most interpretations of instrumentalism lean towards historical materialism, in which the locus of the manipulative action lies quasi-exclusively with the economic and political elites of a given society. In this *elitarian perspective*, elites instrumentalise distinct cultural traits that underlie ethnic identity formation as tools to create, remodel, reinforce, manipulate and instrumentalize ethnic identities, affiliations, divisions and

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<sup>17</sup> I am setting the term *racial-biologic* in italics because it is well appreciated that biologically defined racial differentiation does not exist within the human species. Nevertheless, various conceptions of *race* remain a strong reference in social identity formation. Given that social identities are subjective, racially defined identities must be considered as real, although in biologic-scientific terms, the defining factor is not *racial*, but rather *social*. Common factors of so-called *racial* differentiation are linked to phenotypes of skin, hair and iris color as well as biometric factors such as body height and shape.

alliances. By manipulating ethnicity, elites re-engineer, direct and control the collective political and economic clout of the masses in accordance with their own political agendas (see e.g. Brass, 1985).

It is widely appreciated that instrumentalists draw at least some of their roots from historical materialism (Kebede, 2004), the founding fathers of which (see Marx and Engels, 1846; 2016) squarely disqualify all non-class related social identities including ethnicity as false consciousness, designed to undermine the only relevant social consciousness, namely the consciousness of social classes. The rationale of this feat of social engineering lies solely in protection of the capitalist state and its elites from dangerous class conflict (see e.g. Marx and Engels, 1846; 2016, Engels, 1884; 2012 and Cox, 1948).

Whereas much of the instrumentalist literature focuses on the elite side of the equation, a growing number of studies also heeds to ethnic instrumentalization at the intermediate and lower levels of society, i.e. to the instrumentalization of ethnicity by subordinate-level rural elites, as well as by ordinary citizens and commoners. In a more broad-sweeping approach, Fenton (2003, pp. 76), for example, writes that *if behavior in terms of ethnic attachments could be seen to be serving some individual or collective political or economic ends, then the ethnic action could be reinterpreted as instrumental*.

Additional focus on the individual level is added by Patterson (1975, pp. 348) who, in fact, inverses a Marxist tenet when he claims that *the strength, scope, viability, and bases of ethnic identity are determined by, and are used to serve, the economic and general class interests of individuals*.

Several works discussed in the literature section of this thesis (see e.g. Lemarchand, 2009; Young, 2007 and Young, 2012) provide ample examples of ethnic instrumentalisation not only by central state elites, but also by second and third level rural elites and even peasant populations.

**Ethnicity in North Kivu:** It thus becomes clear that ethnicity underlies a very diverse set of dynamics depending on the context within which it appears. More importantly, the social, political and geopolitical roles of ethnicity are defined by the socio-cultural, historical, socioeconomic and political settings within which ethnic identities thrive.

For the purposes of this study, ethnicity may ultimately be defined by any composition of physical, socio-cultural and/or lineage-based traits upon which a relevant social group decides to found its conceptualization of ethnicity<sup>18</sup>. In North Kivu, ethnicity is most commonly defined by inherited physical (“*racial*”) traits, socio-cultural<sup>19</sup> traits and *lineage* or *kinship* based traits<sup>20</sup>, but acquired traits also play a role<sup>21</sup>. These include inherited and acquired lineage, kinship and clan membership, native and acquired languages, inherited and acquired spiritual beliefs and practices, inherited and acquired socioeconomic and

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<sup>18</sup> An ethnicity-defining social group can be any social group that, either in an inward or outward-looking manner defines ethnicity and that has any considerable impact on the way society at large considers its ethnic and/ or ethno-tribal components. Like most social identities, conceptualizations of ethnicity are ultimately subjective. However, they can be socially normed and therefore attain a more or less society-wide validity. But where few society-wide norms exist in this regard, or where such norms are contested, ethnic identities are also likely to be contested. Consequently, ethnic groups may exist in their own social conceptualization, but not in that of other segments of society, or vice versa. Several real world examples of ambiguous and contested ethnic group identities play important roles in the geopolitics of local and regional conflict in North Kivu and the wider African Great Lakes region. I will discuss the most prominent of these in some detail in the results discussion Chapter 7 of this thesis.

<sup>19</sup> I would define as socially *inherited* an individual’s native language, socio-cultural norms, customs and homeland references that are acquired from parents, family members and the immediate social environment as of the early childhood years. Socially inherited traits of ethnicity are perfectly aligned with the previously discussed historicist interpretations of near-static ethnic identities such as those proposed by Herder (1791; 1995) and also with more dynamic models such as that proposed by Connor (1993). However, though important in defining ethnicities, inheritance is not all; ethnicity-relevant traits and combinations thereof can also be acquired, modified and re-interpreted in processes of social construction and instrumentalization within very short periods at both individual and collective levels (see e.g. Fenton, 2003).

<sup>20</sup> I would define as lineage and kinship-based all those traits that are linked to family or clan membership, ancestry or blood lineage. The ethnicity-defining relevance of such lineage or kinship based traits lies in the fact that in North Kivu many clans and families are, at least in popular conception, inherently linked to certain ethno-tribal groups. This is particularly the case with members of families that currently represent, or that have represented in commonly remembered history, any level of *customary* (tribal) authority, or that have in any other way represented or claimed to represent any one ethnic or ethno-tribal group in the past.

<sup>21</sup> For example, my research in North Kivu has shown that it is possible for an individual or a group to informally acquire a new ethnic identity via the adoption of a different group’s language and customs. Ethnic identities can also evolve via reinterpretations of history and social or political alliances, thereby leading to new conceptualizations and definitions of ethnicity (several examples of the latter will be discussed in the results discussion Chapter 7). What is more, at another level, it is not at all uncommon for ethno-tribal communities in North Kivu to adopt and thereby assimilate individual members of other communities. Given the patrilineal traditions of North Kivu’s customary societies, this is quite commonly the case for females after marriage. But it may also follow the adoption of a child or, in some cases, it may be a direct decision by tribal authorities to adopt a child or adult member of another community into the own. A semi-formal adoption by tribal elders into a new tribal community would normally imply the integration into a new ethnic community (series 1.1.2 interview in Goma, 2014). This is partially because tribes are widely considered to be the base or foundation of ethnic communities in North Kivu (see e.g. Vansina, 2001).

occupational activities, ethno-tribally<sup>22</sup> defined norms and customs, inherited and acquired national affiliations, formal citizenship, geographical origins, references to a communal homeland and residences of choice. Amongst these, the regionally most common and therefore dominant denominators of ethnicity are native languages, clannish and tribal lineages, kinship and affiliations, tribal norms and customs and references to communal, i.e. ethno-tribally defined homelands.

An important element is that given the acquirable and often overlapping characters of several ethnicity-defining traits, ethnic identities are malleable. This is also because at the individual level, choices can be made that affect ethnic affiliation. Mostly however, ethnic identities in North Kivu are determined at the collective level. This may either happen endogenously by a group that, based on a given set of qualifiers, defines itself as ethnic, exogenously by an out-group, or both.

**The Ethnie, the Tribe, the Chiefdom and the Chieftaincy in North Kivu:** Despite its roots in history, ethnic identity formation is a constant ongoing and open-ended process. This process may be swift, but it is more often very gradual in development. This is because several of the socio-cultural traits that I have identified as ethnicity defining in North Kivu may take generations to form. This is illustrated by the fact that many of the identified traits such as vernacular languages, ethno-tribal genealogies, lineages and kinship, geographic homeland references, spiritual beliefs and practices and certain social norms and customs draw their roots to the tribal cultures that have occupied the region for many generations and, if we believe Chretien (2006), in some cases for over two thousand years.

In an indirect referral to the tribal roots of ethnic identity, several Congolese legislations not only invoke Congolese tribes as the historical foundation of Congolese

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<sup>22</sup> For the purpose of this thesis I will use the term *ethno-tribal* to describe a subject, object or quality that is defined in socio-cultural, politico-administrative or legal terms that lie either at the level of the ethnic or at any traditional society-related level, below the ethnic levels. These levels comprise, most notably, the *tribal*, *chiefdom* and *chieftaincy*-based levels. The term *ethno-tribal* therefore defines a more generic concept than the *ethnic*. Its usefulness lies in the fact that *the ethno-tribal* includes a category of related concepts that are in some contexts difficult to distinguish. The term will be used wherever it is unclear where the locus of a social identity, characteristic or trait lies, or wherever further distinction appears irrelevant.



society, but they also define its citizenry in ethno-tribal terms<sup>23</sup>. But neither of these legislations provides a list of the tribes or the ethnic groups that they consider *Congolese*. There exists also no legislation or document that would authoritatively define the *tribe* as a socio-political concept or entity<sup>24</sup>.

Corry (2011) offers a definition of the *tribe* that is frequently cited in popular and academic literature. According to the latter, tribal societies are largely free of institutionalized socio-political hierarchies; and tribal people are clearly different from the mainstream and dominant societies and mostly self-sufficient. Notwithstanding the fact that it is vaguely held, Cory's (2011) description contrasts in important points with the realities of the socio-political units that make up much of the understructure of North Kivu's rural societies. This is because firstly, despite the fact that quasi-subsistence<sup>25</sup> agriculture is the predominant socioeconomic model, inter-regional trade is, and has long been, important enough to discard the proposal of economic self-sufficiency. Secondly, North Kivu's traditional agricultural societies - which make up the lion share of the province's rural populations - are far from free of their own institutionalized socio-political hierarchies: These societies are, indeed, highly stratified. And thirdly, given their numerical importance<sup>26</sup>, North Kivu's rural societies cannot, at least in demographic and political terms, be considered marginal or otherwise, as Corry (2011) writes, clearly different from the mainstream.

A more suitable description of North Kivu's rural societies lies therefore in Carneiro's (1981; 2011, pp. 45) definition of a chiefdom, which he describes as an *autonomous political unit comprising a number of villages or communities under the permanent control of a paramount chief with at least two or more levels of inherited political hierarchies*. Carneiro

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<sup>23</sup> This is the case with all five postcolonial constitutions of the DRC. The constitutional references to an ethno-tribal foundation of Congolese society will be discussed in more detail in the following subsections on ethno-tribal autochthony and ethnic citizenship as well as in the results discussion Chapter 7 of the thesis.

<sup>24</sup> This and related omissions, as I will suggest in the results discussion Chapter 7 of the thesis, have some of their roots in domestic political strategy. On a second level, the omissions are also linked to the fact that the pre-colonial and early colonial histories of North Kivu's indigenous societies are not very well known.

<sup>25</sup> With "quasi-subsistence agriculture" I mean agriculture that primarily serves the subsistence needs of farmers but that typically generates some surplus that is traded on local markets for other goods.

<sup>26</sup> It should be noted that well over sixty percent of North Kivu's population can be considered *rural* (DRC, 2005) and that the majority of the rural populations is administered by ethno-tribally defined *customary* administrations (DRC, 2005; Boshap, 2007).

(1981; 2011) compares these hierarchies to social classes within systems of tributary or otherwise subservient socioeconomic and sociopolitical relationships<sup>27</sup>. Both the terminology *chiefdom* and Carneiro's (1981; 2011) definition thereof are therefore more closely aligned with the DRC's administrative language that refers to its rural administrative *customary* sub-units as *chefferies*, which translates to *chiefdoms* or *chieftaincies*.

For the purpose of this thesis, I adopt the local terminological custom and refer to all rural, lineage-based traditional socio-political units that define themselves via a common vernacular language, a lineage based customary authority, traditional norms and customs and historical references to geographical homeland as *tribes*. I therefore treat *tribes* as a super-category that includes Carneiro's (1981; 2011) conceptualization of *chiefdoms*. These *tribes* constitute the substrate on which a large portion of the ethnicity-defining socio-cultural attributes have developed: vernacular languages, tribal norms and customs (most notably concerning land tenure, rural resource management and marital practices), spiritual beliefs and practices, geographical origins and territorial homeland references.

Furthermore, congruent with Carneiro's (1981; 2011) proposition, this thesis will define those primarily agriculture-based socio-political units (*tribes*) that fit Carneiro's (1981; 2011) description of a socially stratified, rural political society under the permanent control of a paramount chief within a system of tributary socioeconomic and sociopolitical relationships as *chiefdoms*. It is important to note that firstly, I consider *chiefdoms* as a sub-category of *tribes* and that secondly most of North Kivu's *tribes* (and, most notably all of North Kivu's major agricultural *tribes*) constitute *chiefdoms*. Finally, the term *chieftaincies* will be reserved

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<sup>27</sup> There are obvious caveats to the application of Carneiro's (1981; 2011) definition of a *chiefdom* in the context of North Kivu. This would be most of all that the *tribes* or *chiefdoms* integration into the Congolese state and their formal subjection to the DRC's territorial sovereignty vastly compromises their autonomy as political units. Secondly, politico-administrative engineering projects at the central state level and political shocks (such as the colonisation and occupation by foreign powers, wars, population displacements and Mobutu's dictatorship) have repeatedly put into question the permanent status of the chiefs and also of the internal political structures of the chiefdoms. Nevertheless, the internal structures of North Kivu's dominant tribal administrations, i.e. those of the Nande, Hutu, Hunde and Nyanga communities continue to resemble fairly closely the broad lines described by Carneiro (1981; 2011). The socioeconomic and politico-administrative architecture of North Kivu's demographically and politically dominant *tribes* or *chiefdoms* will be briefly explained in the *study area* Chapter 6 of the thesis.

for those chiefdoms that the DRC has formally recognized and integrated into its politico-administrative architecture as *entités territoriales décentralisées* (ETDc)<sup>28</sup>.

**Ethnic Historicism, Constructivism and Instrumentalism in North Kivu:** Hence, most of North Kivu's ethnic identities have their origins in centuries-old processes of ethno-tribal social identity formation. In many cases, these social identity-forming processes are long enough to justify a historicist view of ethnicity. It is important to note, however, that this is not always the case. Indeed, particularly in times of accelerated political change or crisis, ethnic construction accelerates as *instrumentalization* dynamics gain the upper hand. When *instrumentalised* as political or economic tools, ethnic identities, affiliations and alliances tend to form, harden, alter or dissipate much faster in response to the changing needs, interests and strategies of social agents. Here both the *elitarian* and the *individualist instrumentalist* interpretations are appropriate because *instrumentalisation* processes are present both at the elite level (for example, via elites that reinforce ethnic identities to mobilize ethnically-defined constituencies) as well as at the individual level (for example, by individuals that make certain, interest-driven choices that effect their ethnic identities and affiliations). As I will show in the results discussion Chapter 7, *ethnic instrumentalisation* has been a central factor of social identity formation in North Kivu and much of the African Great Lakes region since the early decades of the colonial period.

Whereas the dominant discourses of *ethnic instrumentalisation* have changed over time, they have, at least throughout the past five decades, by and large revolved around the following three concepts: ethnic or ethno-tribal territoriality, ethnic or ethno-tribal autochthony and ethnic or ethno-tribal citizenship. All of these three concepts have been very much at the center of political competitions over citizenship, property rights and electoral and political representation rights. As such, they have played key roles in several of the numerous armed conflicts that have ravaged the region since the DRC gained independence in 1960.

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<sup>28</sup> The administrative subdivision of the DRC's provinces into ETDcs and the role of <sup>chieftan</sup><sub>cies</sub> and other ethno-tribally defined *customary* subunits therein is laid out in the Law 08/016 of 2008. The role of the chieftancies and the ETDcs within the politico-administrative architecture of North Kivu will be discussed in more detail in the conceptual discussion of land tenure systems, in the study area, as well as in the results discussion Chapter 7 of the thesis.

Given their consistent political relevance and their region-specific character, it appears expedient to provide context-specific conceptual definitions.

**Ethnic and Ethno-tribal Territoriality:** Brunet et al. (2005; pp. 481) describe territoriality as either *what belongs and is specific to a politically defined space*, or as *individual or collective relation to an appropriated territory*<sup>29</sup>. In accordance with these two related definitions, the term territoriality may describe a legal or a behavioral appropriative relation to geographic space and it may concern the individual or the collective level.

This study is concerned with various combinations of all above described levels of territoriality, i.e. the legal and the behavioral levels as well as the individual and the collective levels. In more explicit terms, the thesis is fundamentally concerned with the question of how conflicting legal and behavioral territorial claims at the individual and small collective levels (such as claims to farmland or grazing land plots) interact and reciprocate with legal and behavioral territorial claims at higher collective levels (such as claims to ethno-tribal, *autochthonous*, national and sovereign state territory).

The accentuated relevance of ethno-tribal territoriality to this thesis lies in the fact that in the sociopolitical setting of North Kivu, conflicts over the appropriation of geographic space, i.e. conflicts over claims to land at the individual and all collective levels have a strong tendency to be linked in one way or another to claims to ethnic or ethno-tribal territoriality, i.e. to claims to ethno-tribally defined or ethno-tribally appropriated space. In very many cases such claims are founded on claims to regional or territorial autochthony. This is partially because the ethno-tribal affiliation with an *autochthonous* tribe facilitates access to legal, political and material resources both at the formal legal level of the central state and at the semi-formal levels of the tribal customs and the state-recognized *chieftaincies*. The following paragraphs will provide further elucidations on the links between *autochthony*, *territoriality*, various definitions of *citizenry* and *citizenship* and claims to various types of natural and political resources.

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<sup>29</sup> This short section has been translated from the original version in the French language by the author.

**Ethnic and Ethno-tribal Autochthony:** The Online Etymology Dictionary (2017) defines *autochthonous* as *native, aboriginal and indigenous*<sup>30</sup>. Hence, the term *autochthonous* implies a relation between a *geographic location* or *region* and a *thing* or *being*, namely that the *thing* or *being* came into existence at the location or region to which it or he is *autochthonous*. Finally, *allochthony* is the antonym of *autochthony* and it is a compound of the classical Greek *allo*, meaning *other* or *another* (Klein, 1966; pp. 52) and *thonos*, which means *soil* and *earth*. Thus, *allochthonous* may be translated as *from another soil* and it is mostly used to distinguish from the *autochthonous*. ie from those that stake claims to *autochthony*.

In the context of this thesis, *autochthony* refers not only to the one lifetime-spanning origin of an individual, but also the collective, generations-spanning origin of a group. And consequently, individual claims to *autochthony* are intrinsically interlinked with group claims. Hence, *autochthony* is no longer exclusively linked to an individual's moment and place of birth, but it represents a generations-spanning collective relation between a group and a place instead. This relation can either imply that the group claims to have come into existence in the place or region in question, or alternatively, to represent the first-comers or first settlers to that place or region. If a proprietary claim to the place or region is derived from the claim to *autochthony* the claim becomes an *autochthony-based territorial claim*. And finally, *territorial autochthony* represents a recognized *autochthony-based territorial claim* whereas *autochthonous territoriality* refers to the mindset or ideology that drives such a claim. *Territorial autochthony* can be implicitly recognized by the central state via the attribution of rural administration authority to the customary leadership of an ethno-tribal community. This, as I will amply discuss in later sections, is the case in the DRC.

The justification for this apparent semantic nitpicking lies in the fact that in North Kivu conflicting claims over *autochthony* and *allochthony* have been at the center of much bloodshed (Willame, 1997; Tull, 2005; Prunier, 2008). This is at least in part because claims to local or

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<sup>30</sup> The terms *indigenous* and *autochthonous* are oftentimes used interchangeably. This is also very much the case in the socio-cultural and political controversies that surround *indigenusness* and *autochthony* in the context of our research area, North Kivu. Hence, for the purpose of this study, the terms *indigenous* and *autochthonous* are synonym both will be used in an identical sense and therefore interchangeably and besides the etymologic elements, all statements that are made in this conceptual discussion with regards to *autochthony* also apply to *indigenusness*.

regional autochthony are oftentimes accompanied with differing levels of territorial claims. And given that regional autochthony can be rarely established without any reasonable doubt, claims to *ethno-tribal autochthony* are rarely uncontested. The historical and geopolitical contexts within which the contestations have unfolded will be discussed in some detail in the discussion Chapter 7 of the thesis.

In our research setting of North Kivu, terms related to the *autochthonous* and its antonym, the *allochthonous* find current use at both the ethno-tribal and at the national/ central state levels. At the ethno-tribal level claims to *autochthony* are used to legitimate claims to ethno-tribal territory and to economic and political resources that are administered by central state-recognized tribal customary (tribal) authorities at the *chieftaincy* and lower administrative levels<sup>31</sup>. At the national/ central state level, claims to *autochthony* are used to legitimate claims to citizenship and citizenship-derived economic and political resources.

In contrast, the denomination *allochthonous* typically serves to delegitimize and often ostracize certain communities and, ultimately, to bar their members from fully accessing certain economic, legal and political resources. Consequently, in the exercise of portraying competing narratives of *autochthony*, *allochthony* and thereof derived claims without in any way appropriating or sanctioning these, this thesis will consistently uput terms related to *autochthony* and *allochthony* in *italics*.

Several authors from Anderson (1991) and Smith (1986, 1991 and 2002) to Connor (1993) emphasize the prominence of claims to territorial autochthony in popular legitimization and in the founding myths of ethnic and national communities. What is more, all of these authors agree that in most cases, a *first settler prerogative* is difficult if not impossible to establish with any level of certainty. Unsurprisingly then, it can be noted that competing claims to autochthony and autochthonous territoriality may easily confront another.

Prominent historians on the African Great Lakes region from Willame (1997), Vansina (2001) and Chretien (2006) to Prunier (2008) have highlighted that paradoxically, particularly

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<sup>31</sup> I will provide a more detailed discussion of the customary resource administration systems and their integration into the central state's legal and administrative systems in the conceptual discussion of land tenure systems, the study area Chapter 6 of North Kivu, as well as in the results discussion Chapter 7 of the thesis.

in parts of Central and Great Lakes Africa, where concise historical (and, I would add, also contemporary<sup>32</sup>) documentation on resident populations is extremely thin, do claims to autochthony play key roles in competitions for social status and economic and political resources. This is also very much the case in our research setting of North Kivu where competing claims to autochthony are commonly employed to found conflicting claims to land and other physical and political resources. The following subchapter on ethnic and ethno-tribal citizenship will shed additional light on the relevance of autochthony claims in the geopolitical competitions for land and other resources in North Kivu.

**Ethnic and Ethno-Tribal Citizenship:** The English term *citizen* is derived from the medieval French term *citeien* via the more recent *citoyen* Barnhart (1988). In modern English and the most common formal conceptualizations, citizenship is the legal status that defines the citizen, that is, the registered constituent subject of a particular *sovereign* state. The concept of ethnic citizenship usually refers to the legal citizenship that a sovereign state provides to individuals based on their affiliation with an ethno-national community that the state in question claims to represent (Maatsch, 2011). State law that defines citizenship by ethnic qualifiers or other lineage related criteria is referred to as *ius sanguinis*. A large number of European, Asian and African states, such as the DRC, apply elements of the *ius sanguinis* principles to determine eligibility for national citizenship.

In a contemporary context, several Asian and European countries apply *ius sanguinis* legislations to ethno-national diasporas in an effort to bind their members closer to the *nation state* and facilitate their repatriation (see e.g. Marshall, 2000; Ehmann and Stark, 2010). But *ius sanguinis* legislations may also be directed at interior populations. This means that they are framed to selectively attribute citizenship rights to residents based on their ethnic or ethno-tribal affiliations. This, several authors would argue, is the case in the DRC (see e.g. Willame 1997; Tull, 2004; Young, 2007), as well as in several other countries of Sub-Saharan Africa (see e.g. Young, 2007; Marshal-Fratani, 2007 and Dorman, Hammet and Nugent, 2007).

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<sup>32</sup> I will discuss the key role of weak contemporary documentation on property rights and residences to ongoing conflicts over land rights, citizenship, electoral and political representation rights in the results discussion Subchapter 7.1 of the thesis.

In the results discussion Chapter 7 I argue that strong examples for inward-looking *ius sanguinis* legislations comprise the five national Constitutions of post-colonial Congo/ Zaire that have all defined citizenship based on various interpretations of ethno-tribal *autochthony*, i.e. on the membership in an ethno-tribal community that was affirmatively established on Congolese territory at a specific moment in colonial or postcolonial history. In fact, the only essential difference between the five successive Congolese constitutional citizenship definitions lies in the benchmark moment, i.e. the date at which an ethno-tribal community was required to be territorially established on Congolese soil for its members and their descendants to qualify as Congolese citizens. Given that none of the five constitutions or any follow-up legislation provides a list of the territorially established ethno-tribal communities at the benchmark moment and that neither defines what exactly constitutes a tribe or what exactly constitutes tribal *establishment* on Congolese territory, the law calls for ambiguity, controversy and conflict in a matter as critical as citizenship rights.

Whereas *ethnic citizenship* at the sovereign state level represents a legal concept, it represents a normative and effectively applied concept at the ethno-tribal level. Here, *ethnic citizenship* and the synonymous *ethno-tribal citizenship* describe the semi-formal status of an individual that is member of the same ethno-tribal community as the customary leadership of a given customarily defined politico-administrative subunit (ETDc) of the DRC<sup>33</sup>. The customary leadership of these subunits holds significant powers over the rural populations as it holds, by delegation from the Congolese state, far-reaching land, timber and agricultural resource administration rights, as well as civil administration and dispute adjudication authorities (Boshab, 2007)<sup>34</sup>.

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<sup>33</sup> Indeed, the concept of *ethno-tribal citizenship* is oftentimes used interchangeably with references to *ethno-tribal autochthony*.

<sup>34</sup> The Congolese state claims sovereignty and exclusive proprietorship over all land and its subsurface resources. The state also claims exclusive adjudication powers in all civil and criminal matters. However, in rural areas, the state delegates most of these powers to customary authorities (see the *Ordonnance-Loi 1966-06-07*, the *Loi 73-021*, *Loi-080-008* and the Congolese *Code Foncier* for details on the formal locus and the delegation of land administration rights; see also the *Loi 82-020* for details on the delegation of adjudication rights; see also Boshab (2007) for an in-depth discussion of the delegation processes). The consequence of this delegation of rights is that customary authorities administer roughly ninety percent of the country's landmass (Tull, 2005; Huggins et al. 2006) and hold adjudication powers over the rural population majority (Boshab, 2007). A detailed discussion of



Consequentially, it is at the ethno-tribal leadership level that access to assets such as land and many types of services are dealt out to a large part of the rural populations (Tull, 2005)<sup>35</sup>. This will become centrally important in the analysis of conflicts over land and political resources between self-proclaimed *autochthonous* and so-called *allochthonous* populations.

For disambiguation purposes, this thesis will use the term *ethnic citizenship* when referring to ethnically defined formal legal citizenship at the sovereign state level (as in the first example above). In contrast, *ethno-tribal citizenship* is used to describe the membership in an ethno-tribal community that offers important semi-formal, and thereby formally recognized, administrative, adjudicative and socioeconomic services to its members.

## **2.4 The Ethnie, the Nation, the State and the Nation-State: A Disambiguation**

The term *nation* derives from the Latin *natio*, which means *birth*, *stock* and *race*. Following Brunet et al. (2005), the term *nation* refers in its primary sense to a group of people of the same birth or origin. For Lakehal (2005) a nation is a community that shares a common language and the reference to a common destiny. For Meynen (1985) a nation represents a population with a shared language, a shared affiliation to a people, shared cultural habits, and a common intellectual heritage. Meynen (1985) also establishes a link between the nation and

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economic, political and geopolitical implications of the rights delegation processes and the dualistic systems is presented in the results discussion Chapter 7 of the thesis.

<sup>35</sup> As we have seen in the previous two footnotes, the DRC's third, fourth and fifth-level politico-administrative subunits (ETDCs) are administered by tribal (customary) leaders that also hold hereditary leadership functions inside their own ethno-tribal communities. It is often argued by its critics that the Congolese approach to dealing with its legal duality conundrum by concentrating locally powerful state administrations and tribal rulership functions in personal union generates considerable conflicts of interest for those who hold these leadership positions. This is because in their legal-bureaucratic functions, customary authorities serve all resident populations as land administrators and civil judges, whereas in their traditional functions, they serve, by definition, the interests of their tribes. It is often criticized by local or regional *allochthones* that ethno-tribal out-group members are often disadvantaged in the ethno-tribally defined customary systems of land administration. However, given the central states' faint and incoherent direct presence in the rural areas, customary administrations are bound to remain ineluctable key service providers in much of North Kivu and the wider DRC in the foreseeable future. A further-going discussion of these conflicts of interest and their impacts on tenure conflicts and intercommunity relations in North Kivu will be provided in the results discussion Chapter 7 of this thesis.

a territory: “*the people that constitutes a nation settles within a (...) territory and calls this her own*”. (Meynen, 1985; pp. 806).

Striking in the above lexical definitions is their near-identicalness with definitions of the *ethnic*, as referenced in the previous subsection. In fact, the *nation* and the *ethnie* tend to be defined in very similar terms. But even more stunning are the similarities between the previous paragraph’s definitions and the territorial definitions of the *state* as provided later in this subsection. Indeed, the terms *ethnie*, *nation*, *state* and *nation state* have significant overlap in their semantic margins. An unfortunate consequence of this is that they are often confounded in popular, political, lexical and academic usage. It is therefore expedient to define and contrast the four.

This confusion is illustrated, for example, by Smith’s (1991, pp. 14) definition of the nation as “*a named human population sharing an historic territory, common myths and historical memories, a mass, public culture, a common economy and common legal rights and duties for all members*”. In a later work, Smith (2002; pp. 15) modifies his definition to “*a named community possessing an historic territory, shared myths and memories, a common public culture and common laws and customs*”.

It is striking that despite the applied changes in the second definition, both uphold the notion that firstly, a nation possesses a territory, secondly, a culture and thirdly, it is united under a universal set of laws<sup>36</sup>, or, in more general terms, that the nation is defined in a colorful mélange of socio-cultural, territorial-geographic and legal terms that our thesis would attribute to three different concepts, namely that of the *ethnie*, the *nation* and the *state*.

A useful disambiguation between the *nation* and the *ethnie* is provided by Young (1976; pp. 181-182) who writes that “*...ethnicity becomes akin to nationalism when the commonalities that underlie the shared identity become articulated by intellectuals and woven*

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<sup>36</sup> This definition would imply that, for example, the two Koreas represent two separate nations and that Germany split into two nations in 1949 based on political decisions taken in Washington, Moscow, London and Paris and re-amalgamated into one single nation at the stroke of a pen in 1990. Furthermore, it is difficult to conceive how Smith (1986, 1991, 2002) views countries, such as Canada, Switzerland, Belgium or India that are clearly formally united under one overarching political state structure, but that by most accounts dispose of at least two or more distinct, territorially circumscribed national cultures.

into a theory of solidarity” and “...history is rewoven as a cultural saga”, “the language is unified, equipped with grammars and dictionaries”, “the effective dimensions of cultural solidarity are given lyrical expression through song, poetry and literature” and a national ideology is formulated that suggests “imperatives of social behavior for those who share it”.

Thus, for Young (1976), the *nation* is the intellectualized *ethnie* that holds the potential to social cohesion and political organization. This however assumes that *nations* are, in fact, a sort of *grown up ethnies* and whereas his examples from early modern era Europe and pre-colonial Africa support this view, it ultimately leaves out the possibility to conceive of *multi-ethnic nations* such as those envisioned for the African continent by Julius Nyerere.

Possibly the most frequently cited scholar of nationalism, Benedict Anderson (1991), provides some conceptual clarity between the *ethnie* and the *nation* via an intriguing historical account of the evolutionary processes that lead to the formation of nationalism in Europe and the Americas and advances a more elaborate conceptualization of the *nation*. Indeed, Anderson (1991) offers a useful disambiguation between the *ethnie* and the *nation* when he writes that the nation is, like the ethnic group, linked by language, other socio-cultural attributes and territorial homeland references. But in contrast to the *ethnie*, which ultimately relies on relational proximity, the nation is a much larger and more modern concept, the size of which is built on modern-era means of mass communication, of which the historically most important are print media, organized census data, cartographic maps and museums<sup>37</sup>.

Thus, although Anderson (1991) provides no explicit conceptual definition, we can deduce that for him, the distinction between the *ethnic* and the *national* lies in size, organizational sophistication, intellectualization and politicization. Furthermore, Anderson’s (1991) examples of early nation-building processes in North and South America hint that multiple *ethnies* can be integrated into large *nations* via broadly accessible vehicular *national languages* such as English, French and Spanish (in North America) and Spanish and

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<sup>37</sup> According to Anderson (1991), the formation of national identities had been set in motion beginning in the early 17th century in the Americas and Europe via linguistic and cultural homogenization and concomitant political awareness raising processes. For Anderson (1991), national identities are imagined inside a common space of shared cultural and political realities by those who are, by means of language and mass media access, connected participants in this space.

Portuguese (in South America), which, according to Anderson (1991) were central to the nation and state-building processes of the late 18<sup>th</sup>, and 19<sup>th</sup> centuries in the Americas. As I will discuss in the results discussion Chapter 7, several Sub-Saharan African polities have, with varying levels of success, adopted nation- and state-building strategies based on the promotion of indigenous or imported *national vehicular languages*. Kenya and even more so Tanzania, for example, have attempted with some success to create national-linguistic identities around the vehicular language Swahili; the DRC has attempted to do the same around its four national languages Lingala, Swahili, Kikongo and Tchiluba.

To Anderson (1991) the nation represents the ultimate *imagined community*. Imagined, via common language-based and mass media-transmitted experiences of shared socio-cultural and socio-political realities, the *nation* is the largest, and at the same time most powerful frame of socio-cultural and political identity formation, and as such, it is the strongest bond that modern history has been able to forge between masses of perfect strangers. For Anderson (1991), it is this “imagined” bond that reliably motivates the members of national communities to provide public goods to their nations, and on a second level, by *association* also to the states that manage to marry themselves to the national idea and to harness and reinforce the national sentiments.

Anderson therefore provides a much more distinct line between the *ethnie* and the *nation* than Smith (1991 and 2002), but he establishes this distinction by intimately marrying the *nation* to the *state*, which he regards as symbiotic<sup>38</sup>. As such, in Anderson’s (1991) view, the *nation* has little meaning outside of the state. This however, is problematic given that there is little spatial coherence between nation and state geographies in a contemporary, worldwide perspective<sup>39</sup>. Furthermore, Anderson’s (1991) quasi-wedding of the nation to the state leads him to implicitly equate *nationalism* with *patriotism*. I think that this, too, is problematic in

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<sup>38</sup> Given that the idea of the *nation* evolved contemporaneously with the Enlightenment’s distantly related idea of the popular state (see the following subsection on the state), the two concepts were (partially) married in the histories of Europe and the Americas. This context-specific conceptual wedding is at the origin of erroneous generalizations and ongoing conceptual confusions (in several European languages) that this thesis will attempt to avoid.

<sup>39</sup> See also the critical assessments of Gibernau (2004) and Connor (1978, 1993) on the use of the concept of the *nation state* in contemporary politics.

conceptual terms, unless one were to adopt a narrow focus on a small number of contemporary European, American and eastern Asian states that, based on their relative ethnic and national homogeneities, have defined themselves in more or less strict ethno-national terms and that have traditionally forged and reinforced ethno-national identities and alongside these, the concept of the *nation state*.

A disambiguation between the *ethnie* and the *nation* that avoids Smith's (1986, 1991 and 2002) *ethnie – nation - state confusion* as well as Anderson's (1991) *nation - state confusion* was proposed by Weber (1922; 2002) nearly one hundred years ago. Indeed, Weber (1922; 2002) suggested that both the *ethnie* and the *nation* can be circumscribed in much the same linguistic and socio-cultural terms, as well as with similar references to subjectively perceived common origins and a geographical *homeland*. The distinction between the *ethnie* and the *nation* is primarily political: It lies in the *nation*'s persistent maintenance of, or claim to political union, and to some sort of political power that, given a nation's reference to a homeland, tends to be, but is not always, territorially defined. Furthermore, Weber's (1922; 2002) examples suggest that he views ethnic identity formation as necessarily linked to a native language whereas national identity formation can be linked to any language that is capable of transporting the *national idea* and its related ideologies, political philosophies and promises of unifying political power.

An important aspect for Weber (1922; 2002) is that ethnic and national sentiments and state loyalties are not imperatively connected and can, in fact, coexist and overlap just like ethnic, national and state geographies can coexist and overlap in only distantly related ways. Weber (1922; 2002) illustrates this distinction on the example of both German- and French-speaking populations of Alsace-Lorraine that by and large opposed their annexation to the Second German Empire after the Franco-Prussian War of 1870/1871. Most of the German speakers constituted conscious members of the German *ethnie*, but concomitantly, they were equally conscious adherents of the French nation; and in many cases they remained so for decades after their forceful incorporation into the German Empire in 1871. Despite their ideological association with the French nation, many of both *ethnic French* and *ethnic German* Francophiles served the German Empire as state servants and soldiers during the First World War until their reunification with post World War I France in 1918.

Weber (1922; 2002) evocative example serves well to illustrate the distinctions between the *ethnie*, the *nation* and the *state* and the convoluted character of social identities and loyalties that they are able to spawn. The main corpus of the thesis will provide several more or less recent real world examples of convoluted social identities and loyalties involving ethnicity, nationality and citizenship from our fieldwork in North Kivu.

But it should also be clear that not all real world examples can be so concisely dissected into distinct and identifiable *textbook* social identities: in many cases there are smooth, seamless transitions and the decision of where to place the separating lines between the *tribal*, the *ethnic* and the *national* reflect political choices.

With regards to *ethnic* and *national* identities it appears useful to evoke two principle reasons for the latter: Firstly, there are no authoritative universal standards that would define at what level of political organization, territorial coherence and historically founded claim to political unity or power an ethnic community becomes a nation. And secondly, the recognition of a community as a *nation* entails certain political rights in many jurisdictions. Indeed, in the global sphere of states that paradoxically define themselves as *nation-states*, *nationhood* entails an informal status as a candidate for regional autonomy or even for sovereign statehood. Consequently, there is a clear tendency for existing sovereign states to deny any type of recognition of *nationhood* within their territorial boundaries to communities that would, by most standards, qualify as *nations*<sup>40</sup>.

The second conceptual confusion around the *nation* intimately ties the latter to the *state*. This, as we have seen, is very common in popular, administrative and even academic usage, all of which apply terms relating to the *nation* interchangeably with terms relating to the *state* and, in some cases, also terms relating to the *government*<sup>41</sup>. Given the cross-European intellectual origin of these terms, it may not surprise that the confusions are not only prominent in English, but also in most other Germanic and Romance languages.

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<sup>40</sup> This, for example, explains Canada's long struggle to recognize the status of the Quebecois nation or Spain's ongoing struggle to recognize that of Catalonia.

<sup>41</sup> Examples for these confusions are legion. Some of the most prominent examples are as follows : The *nation* is confounded with the *state* and the *citizenry*; *international* is confounded with *interstate* and *intergovernmental*; *nationality* is confounded with *citizenship*; *nationalism* is confounded with *patriotism*; *nationhood* is confounded with *statehood* and *nation-building* is confounded with *state-building*.

The connection between the state and the nation is real, but it is neither tight nor in any way inherent: states can thrive without nations and nations can thrive without states. Total consistency between statehood and nationhood does not exist and even relative consistency is rare. Hence, the nation-state is an exception and not the norm. This is, amongst others, well illustrated by Guibernau (2004; pp. 132) who describes the nation-state as a state that claims a part of its legitimacy from its complete representation of a single national community and a government that *seeks to unite the people subject to its rule by means of cultural homogenization*. Connor (1978) defines the nation-state in similar ideational terms but adds a quantitative element, namely that a single dominant nation must account for more than ninety percent of the state's population total. Based on this definition, Connor (1978) points out that less than ten percent of the world's states are, indeed, nation-states whereas all others dispose of more or less heterogeneous population structures. This applies even more distinctively to the large majority of the fifty-four states of Sub-Saharan Africa (including the DRC) where, with the possible exceptions of Lesotho, Botswana, Rwanda and Burundi, references to a *nation state* appear hollow and incoherent<sup>42</sup>.

Thus, as Connor (1978, 1993) and Guibernau (2004) emphasize, it should be clear that the majority of the world's states are multi-national states. For these, a reliance on a nationalist ideology as basis for social cohesion inside the state envelope can only be limited. And, I would add, that a national ideology may in fact, be a threat to their very existence<sup>43</sup>. Given the ongoing

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<sup>42</sup> In analogy to the conceptual confusion between the *nation* and the *state* in much of the international literature and administrative practice, popular discourse and political polemics in the DRC tend to confound *nationality* and *citizenship*. At the same time, the dominant public discourse also links *nationality* to *ethno-tribal autochthony*, thereby invoking a Congolese nation that is defined in ethno-tribal terms via a contentious, exclusive list of several hundred, in many cases socio-culturally only distantly related ethno-tribal communities. The popular contentions over nationality are mirrored in similarly contentious (popular and legal) definitions of citizenship, which Congolese law has consistently linked to changing interpretations of *ethno-tribal autochthony*. As such, conflicting interpretations of *autochthony* effectively constitute the legitimacy basis for both popular conceptions of *nationality* and legal conceptions of *citizenship*. But despite the centrality of *autochthony* to the Congolese self-conception as a people, the legal definition of its citizenry, and, by derivation also to a long series of violent social conflicts, the country's political elites have avoided to pronounce a clear-worded definition of these terms. Given the issue's centrality to many political conflicts in the DRC, it may be assumed that this omission represents no minor negligence, but rather a strategic choice.

<sup>43</sup> The threat of the national idea to multi-national state structures is well illustrated by the break-up of numerous Eastern European states after their escape from the Soviet hegemony in the final decade of the 20<sup>th</sup> century. More recently, secessionist nationalisms have regained ground in several Western European states. In contrast, in the DRC, postcolonial secessionist tendencies were mostly based on ethnic or regional (more so than on *national*)

success of multi-national states in the global sphere, it should be clear that beyond Anderson's (1991) accentuation of the *nation* and *nationalism*, other than nation-based social cohesion models exist and are powerful enough to glue together states and their constitutive societies<sup>44</sup>.

## 2.5 Theories of the State and Applications Relevant to the Research Context

*Statehood* refers to the *quality of being a state* (Merriam Webster Online, 2017). For the purpose of this thesis, *statehood* is defined by each and all of a state's characteristics. *Statehood* is therefore a relative concept that can be attained on several different qualitative levels, all of which can be categorized either as *de jure* or *de facto* qualifiers. Consequently, empirical statehood can be located anywhere on an imperfect dual continuum between zero and total statehood<sup>45</sup>. These concepts will be discussed in more detail in the following paragraphs.

The term *state* is borrowed from the Latin word *status*, which is the *manner to stand*, derived from the infinitive *star*, which means *to stand* (Barnhart, 1988). Durozoi (1987) writes that the state represents the *station* and the *stationary* as opposed to the moving or movement. Via its semantic origins in motionlessness and permanence, the etymology of the term *state* reflects well its monolithic status in many prominent conceptualizations in political sciences

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identities. Interestingly, despite the country's multi-ethnic, and, arguably, multi-national character, nationalism is commonly regarded as a uniting factor by much of the Congolese population (see e.g. Dorman, Hammett and Nugent, 2007 and Young, 2007). In contrast, the ingrained conflicts over the Congolese nation are linked to competing ethnic definitions of what and who composes this Congolese nation.

<sup>44</sup> The conceptual discussion of the previous paragraphs may appear to contain, *prima facie*, some semantic nitpicking; but it is worthwhile to take note that the discussion is nested in a very relevant geopolitical background. This thesis analyses the geopolitics of eastern DRC and its neighbours in the African Great Lakes region, a region where debates on domestic and international politics are dominated by competing references to the *ethnie*, the *nation*, *nationality*, *citizenship*, the *state* and the *nation-state*. Strikingly, despite their prominence in public debates, there appears to be very little consensus on the meaning of these concepts and therefore also little coherence in their application. Our conceptual disambiguation constitutes an attempt to bring some clarity to our own discussions of tribal, ethnic, national and citizenship based social identities, loyalties, interests and alliances in the geopolitics of communal conflict in North Kivu. I think that this conceptual disambiguation is required for a deeper discussion of social and political identities in North Kivu, the DRC and, in fact, much of Sub-Saharan Africa.

<sup>45</sup> The conceptualization of *partial statehood* does not imply mathematically quantifiable levels of statehood. But as the following paragraphs highlight, statehood has a *de facto* and a *de jure* side and each of the two can be graded in very approximate terms according to the qualifiers proposed by various definitions, some of which will be discussed in the following paragraphs.



and International Relations (IR) theory that regard the state as the final and ultimate form of political organization. This however, contrasts with near-consensual views in political anthropology and political philosophy that the state represents a transitional organizational stage in an ongoing socio-political evolution of human societies (see e.g. Trouillot, 2001).

According to lexical definitions by Seymour-Smith (1986), this *statehood stage* of political organization is characterized by the preeminence of a government that conducts public affairs, claims force execution exclusivity and other territorial rights over a given landmass, and enters into political relations with governments of other states. As pointed out above, important to most anthropologists is the transitional state of statehood. This appears unsurprising in view of the timeframe that anthropologists consider: After over two hundred thousand years of anatomically modern human (AMH) history, early forms of statehood have only evolved some five to eight thousand years ago (Wittfogel, 1957; 1967; Carneiro, 1970), whereas the currently dominant notion of sovereign statehood as outlined by Seymour-Smith (1986) has only developed out of the political frameworks of the *Westphalian Peace* after 1648 (Weber, 1922; 2002). More importantly, a formal political model of the *state* was not developed, defined and formalized in international agreements until well after the First World War; and, most notably, the modern state has only become the global standard for political organization with the dissolution of the European colonial empires in the second half of the 20<sup>th</sup> century. And finally, a very diverse group of renowned authors from Marx (1883; 2009) to Ohmae (1995) and Habermas (1998) have predicted the end of the state model ever since modern statehood existed.

Hence, given relatively recent history and its unknown future, the anthropologist view of statehood as a contemporary response to a contemporary set of dominant political interests within current frameworks of sociological, technological, economic and administrative possibilities appears (see e.g. Trouillot, 2001) as the most appealing interpretation.

While largely agreeing on the transitional character of the state model as the globally dominant form of political organization, anthropologists join sociologists, historicists and other social scientists in their disagreement over its development stage, i.e. whether the state as global model is in ascent or in decline. This discussion is of high topicality in the Congolese and also the wider African contexts, where the modern state is a very young phenomenon that

appears, to many observers, in a particularly fragile condition<sup>46</sup>. And as divergent as the analyses on the current state of statehood are the theories of its origins. In the broadest terms, the latter branch into two main categories, i.e. into *voluntarist* and *coercive* theories.

Voluntarist theories highlight internal incentives for populations to unite under encompassing centralized management structures in order to achieve common goals that require centralized coordination. To most theorists of voluntarism, the principal motivator to unite under a centralized structure is the need for protection. For example, in *social contract theories*, individuals escape the unpredictable vagaries of political anarchy by entering social contracts in which they voluntarily surrender some of the freedoms that they would have in stateless societies in exchange for the protection of their remaining freedoms and rights by the state<sup>47</sup>.

To several mid and late 20<sup>th</sup> century theorists of voluntarism (see e.g. Wittfogel, 1957) it is not so much the threat of the neighbor, but rather the need to coordinate collective efforts related to large-scale and long-term development projects (such as the establishment of hydraulic agriculture-based economies) that motivated populations to sign away some of their freedoms in exchange for efficient coordination by a centralized management structure, i.e. by a rudimentary state, some five to eight thousand years ago.

Coercive theories, in contrast, depict the state as a sophisticated system of imposed control<sup>48</sup>. The prevalent reading amongst coercive theorists is that locally dominant individuals and groups developed the state as an organizational tool of domination and resource extraction when sedentary agriculture began to produce surpluses that could be collected and amassed by rent-seeking elites via formalized methods of taxation rather than by the random looting and pillaging that characterized rent-seeking behavior in nomadic societies (Carneiro, 1970). But beyond the common point of departure that begins with a predatory state in the service of rent-seeking elites, coercive theories of state formation diverge between those that view the state as

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<sup>46</sup> See e.g. Jackson (1990), Herbst, (2000), Tull (2005), Young (1997, 2004, 2007) and Prunier (2008) on the fragile *state of the state* in several Sub-Saharan countries.

<sup>47</sup> See early interpretations of voluntarism in *social contract theory* (see e.g. Hobbes, 1651; 1996; Locke, 1689; 1980 and Kant, 1797; 1990) and more recent interpretations (see e.g. Rawls, 1993 and Freeman, 2007).

<sup>48</sup> See a broad spectrum of *coercive* literature ranging from Engels (1884; 2013), Marx and Engels (1884; 2016), via Carneiro (1970) to Tilly (1985) and Wallerstein (2004).

a perpetual beast of prey and those that acknowledge a non-deterministic evolution of statehood that has, on several occasions, produced popular legitimacy founded states resembling those envisioned by social contract theories.

This dissertation is not so much occupied with the historical roots of statehood. But the discussion of theories on state formation in the previous paragraphs highlights several features of statehood that are also useful in the analysis of modern states in Africa. This is because I would argue that statehood is never fully coercive or fully voluntaristic and that contemporaneous states across the globe can be located somewhere on an imperfect continuum between the liberal, social contract founded states of Locke (1689; 1980), Kant (1797; 1990) or Rawls (1993) and the different types of predatory states described by authors such as Marx (1883; 2009), Oppenheimer (1908; 1990), Tilly (1985) or Wallerstein (2004).

Furthermore, I would point out that the relevance of the discussion is accentuated in the context of the DRC and several other Sub-Saharan African states that are routinely described as rent-seeking predators by a wide range of political analysts (see e.g. Bayart, 1989; 2006; Tull, 2005; Collier, 2008 and Collier, 2014). This is all the more pertinent in the context where, as authors such as Jackson and Rosberg (1982), Jackson (1990), Herbst (2000) and Collier (2008 and 2014) would point out, the existence of these states is in many oftentimes artificially preserved either via bilateral rich-to-poor state-to-state clientship or by costly external interventions from the UN and other institutions of the so-called *international community*.

#### **2.5.1.1 Statehood in International Law and Practice**

A frequently cited and by and large consensual (descriptive) definition of modern statehood in international law and practice is formulated in the first article of the *Montevideo Convention on the Rights and Duties of States* by the *Seventh International Conference of American States* in 1933. Article 1 of the Convention reads:

*The state as a person in international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.*

But beyond a broad consensus on this basic definition, statehood definitions diverge in many respects. The most important bones of contention are linked to firstly, statehood recognition requirements, secondly, definitions of national boundaries, thirdly, requirements and liabilities with respect to a state's capacity to exercise territorial control and a force execution monopoly and fourthly, definitions of state sovereignty. With regards to these factors certain guidelines and practices have been established. For example: It is commonly recognized that statehood is established on a *de facto* basis by simple declaration and effective rule over a population and a territory, irrespective of a recognition by other states (Crawford, 2006). This represents the declaratory principle of statehood, and it is prominently defined in Articles 3 and 4 of the Montevideo Convention:

The political existence of the state is independent of recognition by other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon interests, administer its services, and to define the jurisdiction and competence of its courts. The exercise of these rights has no other limitation than the exercise of the rights of other states according to international law.

Furthermore, Article 4 of the Convention reads:

*States are juridically equal, enjoy the same rights, and have equal capacity in their exercise. The rights of each one do not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law.*

The Montevideo Convention's interpretation of the declaratory principle of statehood however, raises more questions than it answers. This is partially so because it explicitly relieves aspiring states of the responsibility to establish territorial sovereignty on the ground via an effective monopoly over the exercise of legitimate force while simultaneously neglecting other essential aspects of state legitimacy that various theories of the state imply (see e.g. the above discussions on the social contract and other voluntaristic theories of the state that imply that the state reliably provide certain services to its subjects).

Consequently, concordant with the Montevideo guidelines, it is widely agreed that a state exists by declaration on a *de facto* basis. But this *de facto* existence is purely conceptual

because no universal global authority exists that would defend the latter's integrity (Crawford, 2006). Furthermore, even in conceptual terms, the *de facto* existence is compromised where a state is incapable of fulfilling requirements set out in various theories of statehood. The *de facto* existence is also compromised where a state is incapable of meeting interstate standards and agreements that require each state to assume accountability for certain externalities (such as e.g. for environmental pollution, terrorism or acts of organized crime) that emanate from its territory.

Hence, a state's *de facto* existence and its *de facto* territorial sovereignty should be regarded as relative and contextually defined concepts. This caveat relates to a discussion on effective statehood and state failure that I will embark upon somewhat later in this subchapter.

The weakness of the declaratory principle of statehood has been anticipated by an earlier concept that is commonly referred to as the "constitutive" principle. The latter traces its roots to the *Westphalian Peace* of 1648 that constituted the first comprehensive regional, multilateral intergovernmental treaty to confirm the new establishment and continued existence of an important number of new and old states in Central and Western Europe (Crawford, 2006). Not surprisingly, the constitutive principle has evolved since its initial application and it is now thought to differentiate between various levels of *de facto* statehood that can be achieved via unilateral sovereignty declaration and the fulfillment of various criteria of effective statehood on the one side and various levels of *de jure* statehood, which can be achieved via the formal recognition by other states on the other (Crawford, 2006).

Whereas states may form without formal recognition by other states, in practice, formal recognition provides a third-party level of legitimation, both towards potential inside and outside contenders. Thereby, a formal recognition by other states significantly increases a state's status, bargaining strength, and its prospects of mid to long-term survival and success in the global political sphere (Crawford, 2006; Shelef and Zeira, 2017).

This is partially so because state recognition has, for several decades, been progressively established in inter-state consensus finding processes and voting procedures at the United Nations (UN) level. Moreover, informal practice has it that non-UN recognized states are by and large *ignored* or *ostracized* by most UN member states in formal-diplomatic

terms<sup>49</sup> (Shelef and Zeira, 2017). This informal ostracism of non-UN member states relates to the *constitutive principle*.

In global practice, state recognition is a multi-dimensional process and it can be unilaterally, bilaterally or multilaterally, implicitly or explicitly, formally or informally accorded. The ultimate stage of formal recognition is the admittance into relevant United Nations (UN) bodies. The first level of formal statehood recognition at the UN lies in the *non-member observer state* status and it requires a two-third majority in the United Nations General Assembly (UNGA) vote. The second and ultimate level of formal recognition lies in the *UN member state* status and it requires a previously established *non-member observer state* status and a subsequent veto-free nine-to-six (or better) majority vote in the United Nations Security Council. The full UN member state status entails voting rights in the UNGA and full protection by international law (see e.g. Crawford, 2006)<sup>50</sup>.

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<sup>49</sup> This means that typically recognized states refuse to establish formal diplomatic relations with unrecognized states. A prominent example of an *ostracized* state is the Republic of China (ROC) which has consistently proven its capability to effectively fulfill state functions (a permanent population, an established authority and force monopoly over a defined territory, a functional government, the capacity to enter into relations with other states, etc.) for over six decades.

<sup>50</sup> *International law* is commonly defined as a *body of rules* that affects the rights of states and their interrelations (see e.g. Merriam Webster, 2017). This however, is conceptually incorrect. The reason is that in legal and institutional theory laws are formulated and adopted by legislative bodies and they are executed and enforced by executive bodies. But there exists no single legislative body that would formulate and adopt *international law* and also no executive body that would universally enforce such law. By and large, legislative and executive bodies continue to reside (with a small, but growing number of exceptions) with individual states (see e.g. Krasner, 2000; Crawford, 2006 and Slaughter and Burke-White, 2006). Nonetheless, from neo-institutionalist, neo-liberal and constructivist perspectives it is oftentimes argued that *international law* exists via international treaties, the charter and statutes of the UN, the rulings of the international Court of Justice (ICJ) and their enforcement via the UNSC's Chapter VII resolutions (see e.g. Krasner, 2002). But ultimately, this cannot conceal the facts that firstly, ICJ rulings are only authoritative if both litigating parties voluntarily submit to ICJ jurisdiction, secondly, non-compliance with court rulings can only be enforced by UNSC Chapter VII resolutions over which each of the five permanent UNSC member states (the P5 states) hold veto power and thirdly, it is empirical fact that there has been no single case in which an ICJ ruling has been enforced by a Chapter VII resolution. The fact that the P5 states hold veto power over Chapter VII enforcements means that enforcement of *international law* is ultimately contingent on the approval of each individual P5 state. This lifts a small number of powerful states, their governments and their citizens at least partially outside of the reach of *international law* and makes the latter selectively applicable at best. The situation however, is different for states that are closer to the bottom of the global power pyramid. Particularly those states (such as the DRC and all of its regional neighbors) that receive substantial financial and/or security related aid from intergovernmental organizations such as the UN and its World Bank and IMF branches are more directly subject to *international law*; and the latter must be considered to have an empirical impact on these. Krasner (2002) writes that the treaties, contracts etc. that constitute *international law* are considered authoritative by most of the lawyers even in those countries that cannot be subjected by the former. Hence, near-universally applied and authoritative for most people and political

The recognition of statehood by the UN bodies is principally contingent on the perceived legitimacy of a claim with regards to competing territorial claims by other states or other governing bodies that aspire statehood (Crawford, 2006). However, history has shown that in actual practice, the political considerations of individual member states may be more salient than legitimacy considerations<sup>51</sup>. In lack of full membership recognition at the UN level, statehood contenders may acquire non-member observer state statuses<sup>52</sup>. Shy of the observer state status, statehood may be recognized unilaterally by other UN member or non-member states.

It is oftentimes claimed by liberal international law and IR scholars that the incentives to acquire a broad-based recognition that is implied in the constitutive principal introduces some level of order into the international system and may serve to diffuse or mitigate territorial conflicts (Crawford, 2006; Shelef and Zeira, 2017). This is because the constitutive principal incentivizes contenders for statehood to establish good relations with other states and intergovernmental organizations in order to achieve full recognition instead of exclusively relying on force capabilities to defend territorial claims. For skeptics however, the constitutive principal does not reliably resolve conflicts over competing sovereignty claims<sup>53</sup>. At the same time, the requirement for recognition that is implied in the constitutive principle may leave some *de facto* existing, possibly very functional and viable, but for any given political reasons unrecognized states<sup>54</sup> in precarious positions vis-à-vis fully recognized ones, while on the reverse side, socially, economically, politically or militarily unviable political units may be

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administrations, international accords, treaties etc. have strong legal and normative character and can therefore be viewed as *law*. Nevertheless, in view of the concept's residual ambiguity, it will be italicized throughout the thesis.

<sup>51</sup> This is illustrated by the large number of states and *quasi-states* that have, at one time or another received recognition from individual UN member states while other UN members opposed and obstructed formal recognition.

<sup>52</sup> There are two current examples of non-member observer states: the *State of Palestine* and the *Holy See*.

<sup>53</sup> A prominent historical example of competing claims and conflicting unilateral recognitions of statehood by rivaling UN members that ultimately contributed to the outbreak of the Simba rebellion and civil war in 1964 lies in the sovereignty conflict of 1961 between the *Stanleyville Republic* and the *Leopoldville Republic*, both of which laid claim to the entire territory of the Democratic Republic of Congo. This example will be briefly discussed in the results discussion Chapter 7 of the thesis.

<sup>54</sup> The most prominent example of a *de facto* existing, fully functional, financially and administratively viable state that entirely lacks recognition at the UN level despite its next to seven decades-old existence is the Republic of China (ROC), as mentioned in an earlier footnote.

granted sovereignty by formal vote at the UN level if the recognition processes include no viability criteria (see e.g. Collier, 2008).

Possibly the most referenced sociologist authors on statehood, Weber (1922; 2002) famously posited that a state derives its legitimacy from its capacity to defend a force application monopoly over the territory that it claims to administer. This definition is at the origin of the *Weberian state*, which describes the state that, as Hobbes (1651; 1996) envisioned in eliminates arbitrary violence from the level of civilian interaction. Whereas in strict *de facto* terms no state can fully claim to consistently exercise a force monopoly over its territory (otherwise there would be, for example, no violent crime), recognized states are at least expected to swiftly re-establish such monopoly after violent disruptions and to prosecute the challengers (Civic and Miklaucic, 2010).

#### **2.5.1.2 Sovereignty, Statehood and Legitimacy in Sub-Saharan Africa**

In returning to Sub-Saharan Africa, it is sometimes argued that the refraining by most relevant international agreements, i.e. those represented by the *Montevideo Convention*, the *UN Charter* and the *OAU* and subsequent *AU Charters*, from adding viability criteria or viability related conditionalities to their statutes has facilitated the formation of a considerable number of marginally viable states (see e.g. Jackson and Rosberg, 1982; Jackson, 1990; Herbst, 2000; Collier, 2008; Collier, 2014). In this context, it is important to bring to mind the global geopolitical context within which African decolonization has materialized. On the African continent, the state formation processes have, with a small number of exceptions, been implemented in extremely precipitated fashions<sup>55</sup> that were often driven more by the geostrategic dynamics of world power competitions<sup>56</sup> than by the social, cultural, economic and political characteristics, interests and needs of the continent's extremely diverse populations (Herbst, 2000). The precipitousness of the African decolonization and state

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<sup>55</sup> In fact, forty-nine of Africa's fifty-four UN recognised states (i.e. all but Ethiopia, Egypt, Liberia, Libya and South Africa) were released into independence by their European metropolises after 1955, and thirty-six of these states became independent in the sole decade spanning 1956 to 1966.

<sup>56</sup> The global and continental geopolitical contexts within which decolonization and independence materialised will be discussed in some detail in the results discussion Chapter 7 of the thesis.



recognition processes is well reflected in the *OAU Charter* of 1963 and the relevant UN declarations (see e.g. the UNGA Declarations 1524 and 2621 of 1960 and 1970; see also Herbst, 2000).

Before the African context, Herbst (2000) argues that the postcolonial state formations were based on exogenous rationales that have left many African countries ill-equipped to sustain their physical integrity. In adopting similar narratives, countless authors such as Collier (2008 and 2014) and Tull (2005) have acknowledged the fragility of postcolonial states in Sub-Saharan Africa. Several (see e.g. Jackson and Rosberg, 1982; Jackson, 1990; Herbst, 2000 and Collier, 2008) have noted that in a strict Weberian sense, many African states resembled incomplete and unviable *quasi-states* or *paper-states* that are actual states only in name.

The ongoing *statehood* or *failed states* debates revolve around a wide spectrum of issues that are sometimes referred to as “political goods”. The political goods that effective states are expected to deliver can be ranked in hierarchies of importance. For the purpose of this thesis, I would follow Rotberg’s (2003) example and rank the provision of physical security squarely at the top of the priority list<sup>57</sup>; physical security then is followed by legal security<sup>58</sup> and the intrinsically related property security<sup>59</sup>. These forms of state-provided securities are followed in rank of importance by a list of publicly administered services

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<sup>57</sup> Rotberg (2003; pp. 3) evocatively formulates: “*The state’s prime function is to provide that political good of security— to prevent cross-border invasions and infiltrations, and any loss of territory; to eliminate domestic threats to or attacks upon the national order and social structure; to prevent crime and any related dangers to domestic human security; and to enable citizens to resolve their disputes with the state and with their fellow inhabitants without recourse to arms or other forms of physical coercion. The delivery of a range of other public goods becomes possible when a reasonable measure of security has been sustained.*”

<sup>58</sup> Legal security describes the rule of law, which implies that formally established laws exist that regulate more or less efficiently public interactions, that these laws are universally enforced by state institutions and that they are not subject to arbitrary interpretation. (Rotberg (2003, pp. 3) writes that “*Modern states (as successors to sovereigns) provide predictable, recognizable, systematized methods of adjudicating disputes and regulating both the norms and the prevailing mores of a particular society or polity. The essence of that political good usually implies codes and procedures that together constitute an enforceable rule of law, security of property and inviolable contracts, a judicial system, and a set of values that legitimize and validate the local version of fair play.*”

<sup>59</sup> The close link between legal security and property security lies in the fact that I would conceptualize property as an ensemble of rights. Property security is, therefore, really a type of legal security.

including medical and health care services, education, transportation, communication and financial infrastructure services.

### **2.5.1.3 The State in International Relations Theories and Critical Geopolitics**

Debates over the above-presented theories of state origin (*voluntaristic* versus *coercive*) and formation (*declaratory* versus *constitutive*) have some overlap with the so-called *inter-paradigm debate*. The inter-paradigm debate initially opposed realist to liberal theories that were ultimately divided over the human nature and its ostensible penchants towards conflict versus cooperation. Realists from Hobbes (1651; 1985), Morgenthau (1946; 1965) and Waltz (1979; 2010) to Mearsheimer (2001; 2014) have insisted that state logic should be entirely rational and free of all human considerations. In contrast, classical liberals from Locke (1689; 1980), via Kant (1797; 1990) to Rawls (1993) counter that state logic necessarily follows the logic of human decision-makers and should therefore account for non-material human considerations, including moral values and ethics in political theory and policy-making.

For realists, the state has banned the default condition of anarchy from the individual sphere by protecting individuals from their predatory compatriots via the promulgation and enforcement of laws. In doing so, states have transplanted anarchy from the individual and private levels to the collective, public, interstate level. Here, no binding laws exist and states compete in strictly self-interested and rational terms for their own survival over territory, resources and power. The assumption of anarchy and self-interestedness imply that ultimately, states are not bound by international agreements even where they exist, because states can easily discard these as a last resort. Individual states are therefore the only relevant players in a global arena that knows no binding morals, standards, agreements or laws (see e.g. Mearsheimer, 2001; 2014).

The difference between classical realists (see e.g. Morgenthau, 1948; 2005) and neo-realists (see e.g. Waltz, 1979; 2010 and Mearsheimer, 2001; 2014) lies in their different evaluation of the human role in international relations: To classical realists state interests can be hijacked by the interests of state leaders (see e.g. Morgenthau, 1948; 2005). In contrast, to

neo-realists, the state always acts self-interestedly, rationally and exclusively on its own behalf. The schism between the two realisms has far-reaching implications with regards to the two approaches' research methods and their development of political strategies and policies. For neo-realists, states can be trusted to rationally weigh the costs and benefits of their actions and, accordingly, to act in their own best interest. In methodological terms, this means that positivist research methods are the best-adapted tools to analyze political phenomena; and furthermore, that game theory and predictive modeling can reliably anticipate state behavior<sup>60</sup> (see e.g. Waltz, 1979; 2010).

This view contrasts with that of classical realists such as Morgenthau (1948; 2005) to whom the state should act rationally and self-interestedly, but can never be fully relied to do so<sup>61</sup>. Consequently, in Morgenthau's (1948; 2005) view, the analysis of interstate relations requires a much higher level of inside knowledge as counterbalance to the game theoretic approaches favored by rational choice scholars.

The realist views of the state have, arguably, lent their roots to historical materialist approaches in IR theory. Just as realism, materialism is a structural theory that interprets politics as a result of political structure. Furthermore, to historical materialists, the state acts rationally, but in contrast to realist angles, the state underlies by definition the rationality of

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<sup>60</sup> In fact, neorealist IR theories share the assumptions on rational preferences, utility maximization and perfect information of neo-classical microeconomics and apply these to inter-state (instead of inter-firm) competitions. I would argue that this approach can be useful when applied to the analysis of specific, individual power struggles between highly bureaucratised, powerful, regionally hegemonic states that, in de facto terms, ultimately stand above the *international system* of customs, rules, regulations, processes and institutions in which they are embedded. But I would also argue that neo-realist theory and its methods are of little use in our research setting of North Kivu and, in fact, for political analysis of power relations on much of the African continent in general. This is because here, sub-state power struggles are very often more relevant to local political realities than struggles at the central state levels; and even interstate struggles have so important sub-state dimensions that a central state centered analysis appears too reductionist to produce relevant results. A second reason to discard neo-realism as analytical approach to African geopolitics lies in the fact that in Africa, possibly more than anywhere else except the Middle East, have internal and interstate conflicts triggered game-changing multi-lateral interventions that were brokered by the AU, the UN or other regional or global intergovernmental institutions. As a result, it can be concluded that at the very least here, states cannot act as free atoms in a global power sphere of chaos and must therefore be analysed within both the social realities of their sub-state strata and the regional and global institutional frameworks in which they are embedded.

<sup>61</sup> Having escaped the Nazi dictatorship in the mid 1930s, Morgenthau had been an eye-witness of the hi-jacking of a sophisticated formal-legal bureaucracy by an initially relatively small, though determined and resolved populist elite, and of the ruthless instrumentalization of the former's resources for the latter's often profoundly irrational objectives.

the leading classes, of which it is a product and which it serves as a tool. In fact, the state follows the rationality and serves the self-interest of capitalist state elites. Consequently, the capitalist state's ontological relevance is reduced to its function as a tool of oppression and exploitation for the material benefit of the ruling class.

In contrast to classical realism, neo-realism and historical materialism, liberalism does not subscribe to any ambitious structural theory. Instead, it recognizes and underlines the relevance of repeated interactions, institutions and processes such as political preference formation and negotiation to IR. Where classical liberals from Locke (1689; 1980) to Rawls (1993) regarded state behavior in international politics as a mirror of a human nature that favors compromise to confrontation, for contemporary neo-liberals it is not human nature, but rather rational cost-benefit analysis that favors multi-lateral processes.

Neo-liberals can be subdivided into an institution-oriented group that is sometimes referred to as *institutionalist* and a process and preference oriented group that is often simply referred to as *neoliberal*. *Institutionalist* IR theories have, in fact, grown out of neo-realism's roots in global anarchy, the self-interestedness of the state and the logic of rational choice. But *institutionalists* also realize that global anarchy is partially mitigated by interstate treaties and institutions, both of which influence state behavior in the global arena (Keohane 2002).

Neo-liberals go several steps further in that they describe state behavior as inherently influenced by and dependent on domestic policy preferences on the one hand and repeated state interactions, negotiation and agreement processes in the global sphere on the other (Moravcsik, 1997). Thus, whereas for neo-realists the given power structure alone determines state behavior and for institutionalists power structure and certain institutionalized rules of the game are decisive, for neoliberals, domestic preferences and processes, international institutions, agreements and rules are all co-determinants of state behavior in conjunction with the given power structure favored by realists. This means that whereas states remain the dominant players on the international scene, they share the latter with a list of secondary players; and all can be expected to compete and cooperate by some mutually recognized rules of the game.

Despite their internal distinctions, all neoliberals share with neo-realists a firm commitment to rationalism, which, as a social theory treats the identities and interests of agents as exogenously givens: all social agents (in this case states) are competing for survival and the maximization of territorial and other, ultimately material resources. Based on this set of given identities and interests, neo-realists and neoliberals analyze and predict how state behavior generates outcomes in international relations. Besides this similar way of framing research problems, the two also share several key assumptions about the involved agents: States, as Wendt (1992, pp. 392) writes in his critical assessment of rational choice approaches to IR, are ultimately regarded as the “*dominant actors in the system, and they define security in “self-interested” terms*”.

A growing criticism of (neo)-realist, (neo)-liberal and Marxist IR theories targets two of the above highlighted points: Identities and interests should not be treated as exogenously givens. Instead, both identities and interests are constructed through social interaction (Finnemore, 1996). This position is foremost advanced by constructivist theorists. Constructivism posits that “*people act towards objects, including others, on the basis of the meanings that the objects have for them*” (Wendt, 1992; pp. 396). Translated into constructivist IR theory, this means that “*states act differently towards enemies than towards friends*”, or, in more illustrative terms, “*US military power has a different meaning for Canada than it has for Cuba*” (Wendt, 1992, pp. 397).

Identities and interests are therefore intrinsically interlinked. But equally important is that state identities and interests change over time. In constructivist social theory, identity is always “*identity within a specific, socially constructed world*” (Berger and Luckmann, 1966; pp. 111). Constructivist IR theory claims that the same applies to states (see e.g. Wendt, 1992 and Wendt, 1999; 2012) as these are forced to redefine their roles and identities in response to changing domestic and international political environments. For an application of IR theory, this means that states should not be analyzed as free atoms in a chaotic universe, but rather as components of their respective domestic and international social environments.

Constructivism occupies an important position in a broader field of post-positivist IR theories. Much of the remaining space is filled by a diverse group of critical theory approaches. The latter comprise critical geopolitics, which, however, is more commonly

viewed as a sub-discipline of political geography (see e.g. Lacoste 1976, Lasserre and Gonon, 2008; Gonon and Lasserre, 2001 and Dodds, 2007). Analogous to constructivist IR theory, critical approaches to IR and geopolitics are sometimes denounced for their lack of theoretical framework. But a defense of critical sub-disciplines would respond that it is precisely the absence of an overarching theory that allows making sense of a broader spectrum of political phenomena that more structural and theory-based approaches such as neorealism, materialism and neoliberalism cannot frame and therefore tend to ignore (Wendt, 1999 and Dodds, 2007).

A second analogy between constructivist IR theory and critical geopolitics is that both frequently venture beyond the central state focus of the more conventional IR theories and examine phenomena at the sub-state levels of political society. A central distinction between the two however, lies in perspective: whereas in its study of sub-state phenomena, constructivist IR theory is ultimately interested by their impact on interstate relations; critical geopolitics, examines these phenomena also in their own right (see e.g. Dodds, 2007).

This thesis incorporates elements of both approaches. Indeed, I would argue with constructivists that state interests depend on state identities and that both are socially framed. This means that a study of the state requires not only a study of its integration into capability-defined structure and the regional and global institutional and security architectures, but also a profound study of its internal and external social environments.

But it appears also expedient to venture beyond the constructivist tenet and to analyze these social environments for their own sake. This is because at both the domestic and the interstate spheres political and geopolitical realities are created not only by central state actors, but also by a long and very diverse list of social, economic and political non-state actors.

Given the heterogeneous composition of political power in North Kivu, the DRC and many other regions of Sub-Saharan Africa, it appears expedient to decompose the latter into its main (formal, semi-formal and informal) modules and to name and analyze them both individually and in conjunction with others. In a partial response to this need, this thesis will use critical geopolitics to analyze several important and all too often neglected modules of the DRC's political society: It will look at the rural communities that are involved in rivalries over the land base; it will analyze their rivalries and the conflicts that grow out of them; and it will,

most notably, analyze these conflicts in their interaction with other conflicts at superordinate and thus more visible levels of political society including the more or less recent events of civil and interstate warfare.

## 2.6 The Formal, Semi-Formal and Informal: Institutions, Traditions, Customs, Norms and Social Capital

The English term *institution* is derived, via the Old French term *institucion*, from the Latin *institutio*, which translates to *disposition*, *arrangement*, *instruction* or *education* (Online Etymology Dictionary, 2017). The Merriam Webster Online Dictionary (2017) describes an institution as *an established organization or corporation (...) especially of a public character, or a significant practice, relationship, or organization in a society or culture*.

The distinction between these two definitions derives from contrasting applications by different disciplines and academic traditions. For example, in the early institutionalist political sciences, institutions were viewed as the controlling, organized organs of the sovereign state (Friedrich, 1953). These definitions ultimately draw their roots to a Hobbesian (1651, 1996) perspective, in which the central state and its institutionalized mechanisms of forced control represent the only stable source of trust-instilling social order. In contrast, *neo-institutionalist* conceptualizations add emphasis to civil, non-state mechanisms. O'Donnell (1996, pp. 34) provides a synthesis of the two approaches and describes an institution as

*“... a regularized pattern of interaction that is known, practiced and accepted (if not necessarily approved) by actors who expect to continue interacting under the rules sanctioned and backed by that pattern.”* (O'Donnell, 1996, pp. 34)

This thesis follows the comprehensive approaches of O'Donnell (1996) but it also adds a conceptual sub-classification that distinguishes between *formal*, *semi-formal* and *informal institutions*. I would also add the caveat that our work follows a common practice in political sociology in focusing exclusively on institutions of politico-administrative character<sup>62</sup>.

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<sup>62</sup> All common definitions of institutions that do not fall into the politico-administrative domain will be described in different, non-institutional terms.

Following a conceptualization by Helmke and Levitsky (2004) I would define *formal* institutions as state bodies of the formal-legal system of a sovereign state as well as state-enforced laws, rules and regulations. The institutional bodies of the formal-legal system include, most notably courts, legislatures, and bureaucracies. Formal institutional rules and regulations include, most notably, common law, statutory law and regulatory law including all state constitutions, laws and regulations. This contrasts with *semi-formal* institutions. Like their formal counterparts, *semi-formal* institutions establish and communicate rules and standards through channels that are *widely accepted as official* but the bodies that define these rules are separate from the central state (Gretchen and Levitsky, 2004).

For the purpose of this thesis and its research context in North Kivu, I define semi-formal institutions as local, tradition-based mainstream society institutions that normally predate the formal-legal (colonial and post-colonial) state systems and that continue to exist alongside the latter. In a contemporary context and, in fact, ever since the regional introduction of formal-legal state systems in the late 19<sup>th</sup> century, semi-formal institutions represent structured, state-like organizations and their internal rules and regulations that are separate from and not directly sanctioned by the formal-legal state system, but that are nevertheless recognized by state law and that take up *mandated* or *delegated* public functions and carry out the associated tasks in a quasi-autonomous manner. In North Kivu, the DRC and many other Sub-Saharan societies, semi-formal institutions have validity on regional sub-state bases; and they commonly encompass the populations of regionally or ethno-tribally defined communities in rural areas.

In North Kivu, this *semi-formal* institutional sector consists of all administrative bodies and their rules and regulations that are consolidated in what is often referred to as the *customary* or *traditional* half of dualistic legal systems. As I will discuss in more detail in the conceptual discussion Subchapter 2.9.1 on property rights as well as in the results discussion Chapter 7, many Sub-Saharan African states have adopted legal *dualisms* or *pluralisms* that partially integrate ethno-tribally defined *customary* institutions into the lower levels of the modern sovereign states' institutional architecture without taking direct or formal responsibility for these. These semi-formal institutions comprise, most notably, customary land tenure systems including their land administrations, land registries and internal rules and



regulations on land ownership, customary adjudication systems that include, most notably, customary courts and tribunals, and finally, customary conflict mediation bodies. Most of these semi-formal institutions are presided by representatives of customary authority, i.e. by members of tribal, ethno-tribal or chieftaincy leadership.

The informal institutional sector is more or less clearly distinct from the semi-formal sector. With regards to the former, the most appropriate definitions reflect neo-institutional vantage points. In an often-cited example, Lauth (2000, pp.24) writes

*“Whilst formal institutions are guaranteed by state agencies and their disapproval is sanctioned by that state, informal institutions are based solely on the fact of their existence and their effectiveness. The power of sanction involved with them is linked largely to social mechanisms of exclusion or is based quite simply on the condition that its non-utilization minimizes the chances of gaining access to goods and services. Informal institutions are equally known and recognizable publicly; however, they are not laid down in writing.”* (Lauth, 2000, pp.24)

Lauth’s (2000) definition is clearly tailored towards the highly formalized mainstream societies of Western and far Eastern states in which public life and its social, economic and political interactions are mostly formalized, regulated and coordinated within formal institutions. In highly formalized societies, the informal institutional sector occupies an auxiliary social behavior-guiding function that is nevertheless essential to most social, economic and political processes (Helmke and Levitsky, 2004). However, in less formalized societies (including less formalized social sub-entities) informal institutions tend to play even more prominent roles as they tend to dominate or even replace formal institutions where the latter are perceived as ineffective, where they lack a grounding or *rootedness* in local culture, or where they are effectively opposed by certain social groups or communities (see e.g. Knox and Monaghan, 2002). Hence, informal institutions may operate in symbiosis or mutual cooperation with the formal sector, they may operate in parallel or again, they may operate in opposition to the latter. In this context, it is important to note that in many of the world’s so-called *weak, fragile* or *failing* states, informal institutions have in large sections replaced their formal counterparts. Some of these institutions serve the wellbeing of society at large whereas others harm the latter (see e.g. Tull, 2005).

**Social Norms and Customs:** The docking points between informal institutions and the most common conceptualizations of *social norms* and *customs* lie in the combination of moral values and social expectations. The Online Etymology Dictionary (2017) defines a *norm* as a *standard*, a *pattern* or a *model* and traces its origins via the French term *norme* to the Latin *norma*, which translates to *carpenter's square*, *rule* and *pattern*. The Merriam Webster Online Dictionary (2017) defines a norm as one of the following: firstly, “*an authoritative standard*”, secondly, “*a principle of right action binding upon the members of a group and serving to guide, control, or regulate proper and acceptable behavior*”, or thirdly, one of the following, related three items: “*a set standard of development or achievement usually derived from the average or median achievement of a large group*”, a “*pattern or trait taken to be typical in the behavior of a social group*” or “*a widespread or usual practice, procedure, or custom*”.

As such, norms are unwritten rules, standards and normalized practices that a society adopts in an informal way in order to order, organize, facilitate, *streamline* and *grease* social interactions. An important characteristic of social norms is that they tend to create trust between social agents (such as individuals or social groups) because they allow the agents’ interactions to follow known, accepted and therefore predictable patterns even in the absence of formal state laws and state sanctions. Norms are therefore an essential ingredient of informal institutions.

For the purpose of this thesis, it appears expedient to distinguish between injunctive versus *descriptive* and between *wide radius* versus *narrow radius* norms. Injunctive norms are more or less authoritative norms that influence social behavior through an implicit or explicit threat of social sanctions. This contrasts with descriptive norms that influence social behaviour by establishing examples. As such, descriptive norms refer to “*beliefs about what is actually done by most others in one’s social group*” (Lapinski and Rimal., 2005 pp. 129). Hence, injunctive and descriptive norms differ in their functional logic as behavioural guides within social groups. An equally important distinction relates to the radius of norms: *narrow radius* norms are adopted by social groups or sub-groups within mainstream society whereas *wide radius* norms are adopted by mainstream society at large (see e.g. Fukuyama, 2000).

Despite their differing etymology, *customs* are usually defined quasi-analogously to *norms*: The Online Etymology Dictionary (2017) defines a *custom* as a *habitual practice* and

traces its roots via the French *coutume* to the Latin term *consuescere*, which means *to become used to* and *to accustom oneself*. The Merriam Webster Online Dictionary (2017) offers four related definitions for a *custom*: firstly, *a usage or practice common to many or to a particular place or class or habitual with an individual*, secondly, *a long-established practice considered as unwritten law*, thirdly, *a repeated practice* and fourthly, *the whole body of usages, practices, or conventions that regulate social life*. Both *norms* and *customs* therefore describe similar concepts and the terms are, indeed, often used interchangeably. However, although unwritten and therefore informal, *norms* are typically understood to be more formalized than customs and to constitute more of an object of social expectations, peer pressure and social sanctions (Lapinski and Rimal, 2005).

However, I emphasise that in North Kivu, the DRC and numerous other Sub-Saharan societies, the terms *custom* (*coutume*) and *customary* (*coutumier*) describe traditional institutions and institutionalized practices at the clan, chieftaincy and ethno-tribal community levels. In contrast to the most common conceptualizations of norms and customs, the *customary* is therefore by definition intrinsically part of the semi-formal institutional domain that defines established patterns of social interactions within the ethno-tribal communities, as well as their recognition by the central state. Hence, for the purpose of this thesis, the terms *custom* and *customary* relate to the norms, customs and semi-formal institutions of the semi-formal, i.e. traditional society-related, *customary* institutional domain.

Social Capital: Putnam et al. (1993, pp. 167) famously defined social capital as “features of social organization such as trust, norms and networks that can improve the efficiency of society by facilitating coordinated actions”. Woolcock (1998) applies similar terms in his definition of social capital as the norms and networks that facilitate collective action. For the purpose of this thesis I adopt a broader definition of social capital. This appears opportune because, as Keefer and Knack (2008, pp. 711) point out, it is oftentimes difficult to distinguish whether trusting and trustworthy behavior emerges as the consequence of an informal social norm, or because of the presence of reputational and institutional conditions that also give rise to such behavior.

We therefore follow the example of Collier (1998) for whom social capital comprises firstly, all formal, semi-formal and informal institutions that order social interactions and

behavior via incentives and sanctions, secondly, social network connections that order social behavior via repeated (reputational) interactions and experience-based knowledge and thirdly and most notably, the level of trust between social agents that emerges as a result of the elements and processes highlighted under points one and two<sup>63</sup>.

Given our definition of social capital, I would follow Serageldin's (quoted in Collier, 1998, pp. iv) assessment that "*social capital is the glue that holds society together and without which there can be no economic growth or human well-being*". At the same time, I realize that social capital is generated at different social scales: it can be generated at the macro-scale of a state's citizenry level, or, alternatively, at micro- or meso-scales within smaller social groups such as families, friendship circles, sports clubs, church groups, unions, criminal gangs, conspiratorial groups, ethno-tribal communities, ethnic militias and rebel armies. Hence, social capital generates cohesion within social groups, communities and societies, including illicit and violent ones. As Lemarchand (2009) pointedly remarks, it is social capital that allows ethnic militias to organize in entirely informal environments, it is the high level of trust inside an effective and deadly ethnic militia that allows it to be effective and deadly, and it is the trust inside the militia that feeds the distrust towards the *other*, and vice versa. It follows, that as systemic and irreplaceable ingredient to all functioning social systems, social capital also has a *dark side*<sup>64</sup>.

In this context, it appears expedient to highlight links between Fukuyama's (2000) conceptualization of a norm's *radius*, as discussed in the previous subsection on *social norms* and the conceptualization of social capital's *dark side*. Fukuyama (2000), Putnam (2000),

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<sup>63</sup> It should be noted that this fairly broad definition of social capital does not preclude the addition of distinctions or sub-classifications. For example, it could be conceptualized that *social capital within semiformal land tenure systems* represents the level of trust that land clients of the customary system hold into their customary land administration system including its semi-formal institutions and the human beings that represent the latter. A subjectively reported high level of trust within a particular system would be described as a *high social capital system*.

<sup>64</sup> Indeed, the so-called *dark side* of social capital has been explored by several authors (see e.g. Putnam, 2000 and Lemarchand, 2009). The conceptualization stems from Putnam (2000, pp. 350) and it was originally conceived to depict suffocating societal pressures within *high social capital societies*. But since its inception, the term has come to signify all the negatively judged externalities that social capital may induce, either to the members that share it or to outgroup members.

Collier (2014) 65 and several other authors argue that the creation of norms, customs and network relations that result in the accumulation of social capital within narrowly defined social groups may very well undermine social capital within mainstream society<sup>66</sup> at large (see also Alesina et al., 2001).

In order to bridge the divide issue that a norm's *radius* raises, Putnam (2000) introduces a conceptual distinction between *bonding* and *bridging* social capital, where bonding social capital serves to create links and build trust between in-group members, whereas bridging social capital connects to *out-group* members and builds mutual trust between the in- and out-groups, thereby ultimately diluting group boundaries. Increasing bridging social capital amounts to building a portfolio of wide radius social norms and network alliances that in turn render a society's composite elements more compatible and inter-functional and thereby strengthen cohesive elements within mainstream society at large.

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<sup>65</sup> Putnam (2000) and Collier's (2014) conceptualizations of *narrow radius* versus *wide radius* norms and social capital link to a politically charged controversy over multiculturalism that opposes proponents of *social conflict theory* to those of *intergroup contact theory* (and the associating political camps). The role of social capital to these theories has been highlighted by Putnam (2007) who argues that society-internal heterogeneities of tribal, ethnic, national and religion-based social identities inherently put at risk a society's common foundation of wide radius social norms, values, customs and codes of conduct. This, in turn, undermines social cohesion because it erodes the internal trust levels and other elements of social capital. What is more, for Putnam (2007), (tribal, ethnic, national and religious) socio-cultural heterogenization within a given society not only generates conflicts between social identity based in-group and out-group members, but also group-internal conflicts. This is because the heterogenization process causes group members to *hunker down* in an environment of eroding social norms, customs and values. This, in turn, leads via an overall reduction of social interactions to the dissociation of individuals from society in general and to a reversion to individualism and self-interest. Putnam's (2007) idea is further developed by Collier (2014) who offers a rudimentary quantitative model that attempts to weigh socio-cultural heterogenization rates as a function of immigration versus socio-cultural assimilation and integration rates. Collier (2014) predicts that roughly equal-sized integration and assimilation rates are required to counter-balance socio-cultural heterogenization if social cohesion is to be maintained within a given society. It is important to note however, that despite the authors' re-ignition of a smoldering *conflict* versus *contact theory* controversy, their work suits neither of the two camps. This is because both authors argue against the *contact theory camp* tenet in claiming that intercultural contact may very well generate excessive levels of social conflict, which, in turn, bears the potential to overburden any given society. At the same time, both authors also argue against the *conflict theory camp* tenet in highlighting that immigration is ultimately beneficial as long as its rate does not exceed a society's socio-cultural integration capacity in the mid to long terms.

<sup>66</sup> When using the term *mainstream society* I refer to the members of a very large society such as a citizenry that is composed of an undetermined number of social groups, communities, etc, but that nevertheless holds a certain foundation of shared values, customs and norms in common (at the level of the *mainstream society*).

## 2.7 Clientelism, Political Patronage and Neopatrimonialism

Clientelism, patronage and neopatrimonialism are linked concepts in political sociology. A disambiguation will help to provide the conceptual basis for the following discussions.

The term *clientelism* is a derivative of the term *client*, which is derived from the medieval French term *clyent*, itself, a derivative of the Latin verb *cluere*, which means *to listen* and *to obey* Barnhart (1988). In sociology and political sciences the term *clientelism* describes a relation of reciprocal dependency between a hierarchically higher placed and a lower placed individual. Weber (1922; 2002) who coined the term in the early 1920s described it as an inherited relationship between an inferior (client) and a superior (patron) in which the client offered intangible assets such as work and political support in exchange for land to work on, a job, protection or similar benefits. In contemporary usage, *clientelism* describes a mix of formal and informal relations between political elites and actors in subordinate levels of society. In this context Scott (1972, pp.3) describes *clientelism* as an

*... instrumental friendship in which an individual of higher socioeconomic status (patron) uses his own influence and resources to provide protection or benefits, or both, to a person of lower status (client) who, for his part, reciprocates by offering general support and assistance, including personal services, to the patron.” (Scott, 1972, pp.3)*

Congruent with this definition, Munro (2010) describes a clientelistic relation as dyadic, asymmetrical, reciprocal, personal, enduring and voluntary. It is in the spirit of these two definitions that this thesis conceptualizes clientelism.

*Patronage* stems from the term *patron*, which is derived from the Latin *patronus*, meaning *protector* and *defender* (Barnhart, 1988). According to the Online Etymological Dictionary (2016), the term *patronage* has been used since the early 15<sup>th</sup> century when holding patronage meant *the right of presenting a qualified person to a church benefice* and changed its significance to a more general *power to give jobs or favors* during the 18<sup>th</sup> century. In contemporary usage *patronage* can refer to a broad spectrum of concepts ranging from *the support given by a patron via the power to control appointments to office or the right to privileges* and *a patronizing or condescending manner* (The Oxford Online Dictionary, 2017).

Contemporary conceptualizations of patronage are best established by contrasting the latter to the closely related concept of clientelism. The latter describes the political relations between patrons and individual clients, whereas *patronage* describes the relation between patrons and client groups (Erdmann and Engel, 2006). The concept of *political patronage* is then used to describe a politically interested link between superiors and inferiors inside political structures such as states: The patron uses state resources to either coopt groups or to reward them for political support. In *clientelism*, the patron uses state resources to coopt individuals and to induce them to specific actions.

Erdmann and Engel (2006, p.21) provide the following disambiguation:

*“For analytical purposes, we distinguish between clientelism and patronage. The latter is the politically motivated distribution of “favours” not to individuals but essentially to groups, which in the African context will be mainly ethnic or subethnic groups. Clientelism implies a dyadic personal relationship between patron and client, while patronage refers to the relationship between an individual and a bigger group. The difference between clientelism and patronage is essentially the distinction between “individual” and “collective goods”; clientelism implies, first of all, an individual benefit (land, office), patronage collective benefits (e.g. roads, schools etc.).”* (Erdmann and Engel, 2006, pp.21)

**Neopatrimonialism:** *Patrimonialism* is derived from the term *patrimony*, which itself has its origins in the Latin *patrimonium* meaning *paternal estate* or *inheritance*. In modern English, the term *patrimony* describes an immaterial inheritance or “*immaterial things handed down from the past*” (Online Etymological Dictionary, 2011).

The term *patrimonialism* was first used in a socio-political context by Weber (1922; 2002). According to the latter, patrimonialism defines a political society in which a traditional leader that is legitimized through inherited title ensures compliance from his subjects through a combination of tradition and a more or less informal politico-economic trade system in which ruler-administered assets and services are traded down a hierarchy in return for a subject’s or subject group’s allegiance, tributes or personal services. Lacking formalized legal frameworks and enforcing institutions, Weber’s patrimonialism is bound by tradition, norms and personal relations between the rulers and the ruled.

The term *neopatrimonialism* was coined by Eisenstadt (1973) to describe a situation where two heretofore perceived as mutually exclusive Weberian concepts of rule, that is patrimonial and legal-rational bureaucratic domination, co-exist symbiotically and become intractably interwoven. Erdman and Engel (2006, p. 18) provide further definition:

*“Under neopatrimonialism the distinction between the private and the public, at least formally, exists and is accepted, and public reference can be made to this distinction (it is a different matter whether this is observed or not). Neopatrimonial rule takes place within the framework of, and with the claim to, legal-rational bureaucracy or “modern” stateness. Formal structures and rules do exist, although in practice, the separation of the private and public sphere is not always observed. In other words, two systems exist next to each other, the patrimonial of the personal relations, and the legal - rational of the bureaucracy. Naturally these spheres are not isolated from each other; quite to the contrary, they permeate each other; or more precisely, the patrimonial penetrates the legal-rational system and twists its logic, functions, and effects. That is, informal politics invade formal institutions. Informality and formality are intimately linked to each other in various ways and by varying degrees; and this particular mix becomes institutionalized.”* (Erdman and Engel, 2006, pp. 18)

*Clientelism* and *patronage* are therefore two closely related concepts that are both integral building stones of *neopatrimonial* rule. In *clientelism* state resources are passed down formal and informal hierarchies in exchange for votes or other political support from individuals. In political *patronage* the goodwill or political support of larger groups, such as lobby groups, occupational or ethno-tribal communities is sought through the handing out of state resources. In both cases, the conduit, that is the intermediate channel between political center and periphery, may consist of a *mélange* of both formal bureaucratic hierarchies and informal networks. The latter may comprise traditional customary authorities and their subordinate tribal hierarchies, commercial-industrial networks, civil society groups and criminal organizations. The resulting systemic linkages between bureaucratic and informal hierarchies then constitute the organizational foundation of the *neopatrimonial* state.

As already hinted in the above quote from Erdmann and Engel (2006, pp. 21)) *neopatrimonial* rule is widely regarded as the hallmark of many African states (see also Herbst, 2000; Tull, 2005 and Diangitukwa, 2001). It was already briefly mentioned in the previous discussion of social capital that a lack of wide radius social norms and social capital



undermines the viability of democratic systems, as it reduces the willingness of political leaders to surrender power to opposition forces (Paxton, 1999) and incites rulers to revert to *clientelism* and *neopatrimonial* rule (Keefer and Vlaicu, 2008)). *Neopatrimonial* rule, in turn, offers itself as a strategy of political domination wherever a sovereign state's mainstream society is compartmentalized into relatively closed, internally more or less cohesive units that can serve as informal vectors for the projection of political power and control, and that may partially or entirely replace or subvert the formal institutions that Weber (1922; 2002) and the predominant sociologic, economic and political theories describe as foundations of modern statehood.

The DRC and its predecessor states are oftentimes cited as picture-book examples for neopatrimonial rule (see e.g. Diangitukwa, 2001; Tull, 2005; Prunier, 2008). It is one of the objectives of this thesis to analyze how *neopatrimonial* rule in North Kivu reciprocates with conflict over land and other resources.

## 2.8 Notions and Theories of Property and Land Rights

According to the Online Etymology Dictionary (2017), the term *property* is derived from the Latin term *proprietas* via the French term *propriété*. Both the Latin *proprietas* and the French *propriété* may translate to *property*, *possession*, *ownership*, *propriety*, *quality* or *special character*. Covering a list of conceptualizations from *ownership* and *possession* to *quality* and *character trait* the English term *property* refers to much the same concepts as its French and Latin predecessors.

Hence, the lexical definitions of *property* describe the relation between a subject and either an object or a quality. For the purpose of this thesis only the subject – subject and the subject – object relations are of interest.

The close conceptual link between the subject and the property is sometimes interpreted as a dyadic relation between a *person* and a *thing* in which *property* reflects a one-dimensional and monolithic right of possession that connects the property owning human to what is his. This approach is well illustrated by the famous quote from William Blackstone (1769, quoted in Diamond, 2009, pp.85) who describes property rights in the following terms:

*“There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.”* (William Blackstone, 1769; quoted in Diamond, 2009, pp.85)

Blackstone’s dictum reflects a notion that has dominated Western understandings of property from the early Enlightenment years until very recent decades of the 20<sup>th</sup> century, namely that property describes a *God-given* or a *natural law-given*, dyadic, exclusive, all-encompassing and absolute relation between the *free man* and what is his. This notion draws its roots via Locke’s (1689; 1980) influences in the Enlightenment literature to much earlier conceptualizations of property law<sup>67</sup> in Western thought<sup>68</sup>.

Not surprisingly, the long dominant view that property represents a coherent and monolithic set of entitlements to a resource has been enshrined in many legal frameworks including the *Napoleonic Code* (*Code civil des Français*), of which article 544 states that property represents “*the right of enjoying and disposing of things in the most absolute manner provided that they are not used in a way prohibited by the laws or the statutes*”<sup>69</sup>.

It is worthwhile to note that this formulation was, oftentimes with minor modifications, transcribed into dozens of national law and property rights codes across the globe, including

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<sup>67</sup> These are namely the Catholic Church’s *Corpus Iuris Canonici* (Catholic canon law) and Pope John XXII’s 1328 bull *Quia Vir Reprobus*<sup>67</sup>, as well as, most notably, the Roman Empire’s *Corpus Iuris Civilis’ dominium* codes (see Garnsey, 2007).

<sup>68</sup> As I will discuss in the following paragraphs, the predominant conceptualizations of property rights throughout much of the nineteenth and early twentieth century are “social conceptualizations”, meaning that the source of the legitimacy of property rights lies in the society that defines these rights. However, natural rights conceptions remain strong in many contemporary rights conceptualizations including those of property rights that are conceived as universal “human rights” to property (see e.g. Article 17 of the United Nations Declaration of Human Rights, UNGA Resolution 217A of 1948 and the *Pinheiro Principles* (*Principles on Housing and Property Restitution for Refugees and Displaced Persons* of the United Nations’ Sub-Commission on the Promotion and Protection of Human Rights (UNHCR, 2005; 2017)). Natural rights conceptions of property also continue to play a niche role within more global interpretations of property rights for certain traditions in post-realist legal theory, political philosophy and classical economics. This thesis follows the contemporary mainstream in Western property rights philosophy and regards all property rights as founded in a social relation between property claiming and property recognizing social actors.

<sup>69</sup> This quote is a translation from the Code Civil (France, 2017), Article 544; which reads in the original French version “*La propriété est le droit de jouir et disposer des choses de la manière la plus absolue, pourvu qu'on n'en fasse pas un usage prohibé par les lois ou par les règlements.*”

those of the postcolonial DRC<sup>70</sup>. But whereas the above-cited article of the *Napoleonic Code* draws reference to an absolute right of disposal over a *thing* and thereby evokes the spirit of Blackstone's (1765-1769; 2009) *despotic dominion*, it also refers to limits set by other *laws and statutes* (Garnsey, 2007). This opening compromises the notion of the universality of property rights and already sets the latter into a limiting social context. The Napoleonic Code's definition of property is therefore sometimes regarded as opening earlier *ownership models* of property to social interpretations and thereby preparing the ground for the *bundle of rights* conceptualization that became the dominant property rights model during the 20<sup>th</sup> century (Garnsey, 2007).

However, it is important to note that the *ownership model* of property has become formally enshrined in Germanic and French versions of the civil code and via these two legal traditions, it has been exported to more than half of the world's contemporary states including the former French, Belgian, German, Portuguese and Dutch colonies in Africa. But despite its enshrinement into many of the world's legal systems, *property universality* has never empirically existed because it has always been subjected to and compromised by state intervention (Christman, 1994; 1999; Pedersen, 2010 and Smith, 2012) and, as Christman (1994; 1999, pp. 18) writes, "*no legal system afforded protection to an unchecked dominion of a resource by an owner*". However, the notion that property is by definition dyadic, monolithic, exclusive and universal has formed popular interpretations and expectations over centuries not only in Western societies, and it continues to do so today (Finnis, 1980).

Building on an early publication of the British anthropologist and legal scholar Maine (1891; 2009) on the integration of local customs into the British common law system, several early 20<sup>th</sup> century scholars around Hohfeld (1919; 1929) and Corbin (1922) have developed a polyolithic property model. Hohfeld (1919; 1929) contributed two key notions to this model: Firstly, all rights including property rights represent a three-term relation between, as Finnis (1980, pp.199) writes *one person, one act-description, and one other person*<sup>71</sup>, and secondly, all

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<sup>70</sup> Indeed, article 14 of the DRC's land code represents a near word-for-word copy of the Napoleonic Code's 544<sup>th</sup> article. The DRC's land code will be discussed in some detail later in this subsection.

<sup>71</sup> This is a descriptive quote from Finnis (1980), who himself, however, argues for a revised *natural rights approach*.

rights including property rights are multi-stranded. This means that they can be broken down into multiple strands of rights.

The origins of these notions lie, in fact, in the roots of common law itself. The latter has, much more than its continental European sibling (civil law), absorbed and incorporated Anglo-Saxon and other tribal and other local customs, as well as feudal traditions into its legal body (Harris, 2005). The late 19<sup>th</sup> century's sprawling legal-anthropological literature sparked not only the realization that formal and informal property rights across the globe are nearly as diverse as the human societies that gave birth to them. But it also sparked an interest in the informal origins of Western law itself.

The early 20<sup>th</sup> century publications of Hohfeld (1919; 1929) and Corbin (1922) have prepared the ground for a near-consensual view amongst social scientists that "property" represents a social relation (Pedersen, 2010). This is because *property* and the recognition thereof are negotiated between *human beings* and not between *human beings* and *things*. Hence, *property* only exists where a *property-claiming subject* and some kind of *social authority* agree upon its existence.

By consequence, *property* should be conceptualized as part of some kind of contract between the *property-claiming subject* and a *social authority*. Property is therefore social and, in Corbin's (1922, pp. 429) words it, "...has ceased to describe any *res*, or *object of sense*, at all and has become merely a *bundle of legal relations-rights, powers, privileges, immunities*".

It has become a quasi-common practice to conceptualize Hohfeld's (1919; 1929) multi-stranded property rights image as a *bundle of sticks* that is negotiated between one or several rights *claimants* and society at large. This *property rights bundle* is viewed as containing a relatively small number of sub-bundles that in turn contain a larger number of property rights *sticks*. Each one of the property rights *sticks* represents one type of property rights, whereas each *sub-bundle* represents a category of property rights and the *bundle* represents the entirety of recognized rights to a property (see e.g. Pedersen, 2010). In conceptual terms, ownership of the entire property rights *bundle* is equivalent to complete property ownership as visualized by the *ownership model*.

A potential strength of this approach is that it conceptualizes a theoretically unlimited number of property rights. Furthermore, the approach allows for each society to define its property rights *sticks*. This means that at least theoretically, every society can define within its jurisdiction what type of property rights to what type of resources can be held or transferred via what type of processes to what type of property claimants (Pedersen, 2010). And finally, the approach holds only a sole tenet towards the source of legitimacy of property rights, namely that the latter is *social*, which means that the legitimacy of all property rights rests with the society within which they are embedded.

But the model is also exposed to a growing volley of criticism from both classical and progressive vantage points. For both, the main shortcoming of the *bundle* conceptualization is that it lacks weighting, qualitative and hierarchical distinctions between the individual property rights and the sub-bundles; and this, most notably with respect to one particular asset type, namely immobile real assets such as land and buildings. From classical and institutional economics perspectives the bundle model underrates exclusionary rights to property, which, in a classical ownership model represent the ultimate right to property; or, in other terms, property is in the end the right to exclude (Smith, 2011)<sup>72</sup>.

From a progressive vantage point, property rights that are linked to the physical survival of human beings as well as to the formation, safeguard and expression of social and cultural identities should be differently weighted than the rest of the property rights bundle. Furthermore, progressives also underline responsibilities that go hand-in-hand with property rights that classical approaches attempt to *internalize* into asset ownership via third-party exclusion. And finally, progressive approaches point to the heterogeneity of property rights,

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<sup>72</sup> The discussion over exclusionary rights to immovable property such as land is very much at the center of a debate in development economics. This is because several conceptual works in institutional (see e.g. Demsetz (1967 and 2002) and neo-classical economics (see e.g. De Soto (2001)) claim firstly, that the capitalization of real property is the foundation of economic development in any society and that secondly, capitalization is only possible through strong and enforceable exclusionary property rights. Both of these works have been written with a special eye to developing countries. And both of the works have been refuted by other authors of development literature in economics, political economy, sociology, political anthropology and human and political geography (see e.g. Platteau, 1996; Merrill, 2002; Molen, 2012 and Barry, 2015). Nevertheless, given their impact as possibly the most referenced works on property rights in the developing world, the following paragraphs will provide a brief introduction their theses and arguments.

namely that the so-called *property rights sticks* are actually splintered, forked and interwoven with other *property rights sticks* (see e.g. di Robilant, 2014 and Barry, 2015).

Hence, the bundle of sticks metaphor has its shortcomings. And these are particularly striking in North Kivu, the DRC and elsewhere where property rights sticks and bundles coexist on nearly entirely disconnected levels, i.e. where different property rights coexist, but not in any integrated fashion. A more in-depth discussion of the property rights systems in North Kivu and the DRC will follow in the study area Chapter 6, as well as in the results discussion Chapter 7 of the thesis.

### **2.8.1.1 Prominent Theories of Property Rights and their Relevance to the Study Area**

Despite the fact that neither one of the property rights models (ownership model, bundle of rights model, “tree” or other progressive models, etc.) is directly associated with any one theory of property rights and cannot be attributed to any one ideological corner, we have seen above that certain links between property rights models, property rights theories and property rights policies are frequently drawn (see also Barry 2015). In this logic, the *bundle of sticks* model is often associated with institutional and liberal theories of property rights and development economics whereas the ownership model tends to be associated with classical theories. The following paragraphs discuss the two most influential property rights theories that have been at the center of much polemic in the literature on development economics, property rights and international development.

In responding to tangible neo-Malthusian apprehensions over exponentially growing world populations and increasing consumption and pollution levels, Demsetz (1967) picked up on a Western hot topic of the time that Hardin (1968) was to imprint into the global conscience less than one year later. Demsetz (1967) agreed with Hardin (1968) that common ownership property rights models misaligned private and public consumption and pollution interests and incentives and therefore undermined economic efficiency while simultaneously posing a threat to the environment. But Demsetz (1967) arrived at a very different overall conclusion. Whereas Hardin (1968) prescribed a socialist model of authoritarian top-down resource management by the central state, Demsetz (1967) posited that privatization and the creation of efficient private property markets would not only deal with the resource scarcity

and pollution issues by aligning private and public incentives, but they would also render society as a whole more efficient and prosperous.

In a series of publications, Demsetz (1967 and 2002) developed a theoretical framework that aims to explain the various existing land rights models based on the demographic, technological and administrative development stages that respective societies have attained. This framework is sometimes referred to as the Evolutionary Theory of Land Rights (ETLR). The ongoing relevance of the ETLR lies firstly, in the fact that it has served as a policy compass for global credit institutions such as the African Development Bank (AfDB), the World Bank (WB) and the International Monetary Fund (IMF) during the heydays of the developing world's often exogenously imposed privatization drives that underlay the Structural Adjustment Programs (SAP) of the late 1970s to mid 1990s. And secondly, the ETLR continues to serve as a theoretical beacon of reference (for both support and opposition) in much of the development economics literature until this very day (see e.g. Platteau, 1996 and 2004).

The core statement of the ETLR is that whereas communal resource ownership represents the most economically efficient property rights and resource management model in extensive resource usage societies, this is no longer the case as resource usage intensifies. The rationale behind this is that as population densities increase and consequently the immediately available resource base per capita decreases and resource usage becomes more intensive, society becomes more exposed to the externalities of cumulative resource usage, i.e. resource scarcity and pollution. Society therefore has an interest to control resource usage and pollution. Demsetz (1967 and 2002) argues that society does this most effectively via through private resource ownership.

By selling private property rights (i.e. the private rights to use, income, exclude, transfer and enforce) to a resource for a price that equates at least the social cost implied in the negative externalities of resource usage, society secures its own compensation for the social cost that it incurs from private usage. But what is more, privatization (and more specifically, the privatization of the right to exclude) has a second benefit: it incites private property rights holders to undertake productivity enhancing investments and to improve the resource (the fruits of which can be taxed and therefore partially re-socialized thereafter). This is because

privatization allows not only the internalization of externalized costs (such as the reduction in value from a consumed resource), but also that of externalized investment benefits (such as for example productivity gains from irrigation, drainage and erosion-countering measures in a farmer's field) via the acquisition of exclusive property rights. This is, in a nutshell, the ETLR's rationale for land and other private resource ownership.

Whereas the ETLR remains an intellectual reference to the economics and development studies literature, it routinely attracts conceptual criticism. For the purpose of this thesis, the most relevant of the latter hinges on three main points: firstly, in its basic conceptualization the theory confounds common ownership systems in general with open-access common ownership systems in particular. Secondly, the theory assumes that efficient property rights are universal and independent of the socio-cultural contexts into which they are transposed. Thirdly and finally, the theory assumes that efficient property rights are by their very nature also efficient and effectively enforceable.

Critics point out that the ETLR commits a conceptual error by discarding more complex common ownership rights arrangements than those implied in open-access systems. Common resource ownership systems can very well apply mechanisms to internalize externalities via, for example, the sale and enforcement of temporary usage and even temporary exclusionary rights to users. Indeed, the ETLR appears to ignore the fact that in many developing societies regulated common ownership arrangements are widespread, many of which recognize and enforce different levels of individual and common property rights (Platteau, 1996 and 1998). The *kalinzi*, *mutolo*, *vusoki* and related tribal resource administration systems of North and South Kivu are, as I will demonstrate later in this thesis (Subchapter 7.2.), good examples for this.

An overhauled and extended version of the ETLR (Demsetz, 2002) then claims that despite all distinctions between communal rights and open access models, the evolutionary principle still holds. The main argument here is that regulated common use implies unnecessary complex property rights relations that require either high amounts of formal-legal



administration inputs or, alternatively, very close, compact personal *trusting relations*<sup>73</sup>. In both cases, common ownership appears inefficient; and it should be allowed to be crowded out by private ownership over the long term in all but possibly a few cases where resources lie outside of any state's sovereign jurisdiction and are therefore only jointly manageable.

Whereas the revised ETLR holds theoretical appeal, its applicability is limited in a global context. This is in part because it underestimates and therefore neglects the roles of socio-cultural, political and institutional history in the expression of property rights. For example, the ETLR is founded on the premise that once promulgated, formal-legal private property rights are inherently enforceable. This however would require highly formalized and effective, rule-of-law driven legislative, judicative and executive institutions. But these, as Platteau (1996, 1998, 2004 and 2009), Merrill (2002), Tull (2005) and many other authors point out, are lacking in many Sub-Saharan societies. Indeed, the required institutional architecture for legal change must not be taken for granted, as it does not come about as a simple by-product of legal formalization and property rights reform.

Translated into the actual context of North Kivu, this means that it is unrealistic to formalize the land tenure system without creating effective formal-legal and executive institutions that can support the change, implement the new system and enforce its laws. The formal institutional apparatus however, is extremely fragile and underdeveloped not only in North Kivu, but also in the entire DRC and many other states of the region. Nonetheless, even in the least formalized institutional environments of North Kivu property institutions do exist. What is more, they have endured rapid population growth, war, humanitarian crises, intensification of resource usage and decades of administrative onslaught. As contextualised on various occasions throughout the thesis, these property institutions rest on the chieftaincies and other traditional *customary* authorities.

A more recent work in development economics that has stirred up both academic literature and public policy to a similar extent as Demsetz' (1967 and 2002) works is that of de Soto (2001). The latter's work extrapolates claims from conclusions that he has drawn from

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<sup>73</sup> Demsetz (2002, pp. 658) refers to this as the *compactness of relations*.

his research on informal real estate property rights in Lima, Peru towards informal property rights at the global scale. His argument is straightforward: registered private title to real immobile property secures property rights, assures asset stewardship, turns assets into capital and represents the first and foremost step in the development of a surplus economy. De Soto (2001) builds his argument on three central lines: Firstly, in analogy to Demsetz' (1967 and 2002), he argues that the privatization, registration and titling of informal property rights to immovable assets such as land or buildings, establishes clear accountability links between the assets and its owners. Asset ownership thereby generates incentives for stewardship, maintenance, improvement and investment. The expected future benefits from secured exclusive ownership constitute an incentive for the owners to uphold their possessions and to maintain and improve their assets.

Secondly, the guarantee of usage, income, exclusion and transfer rights implied in unabated title, if verifiable via title registration and broadly accessible property registries allows immobile assets such as land parcels and buildings to be used as collateral for mortgages and similar asset-backed loans. This, in turn, *capitalizes* the assets as it predisposes their holders to become borrowers and thereby acquire liquidity for asset improvement or other investments.

And thirdly, society-wide applicable, formalized property rights in combination with widely accessible property rights titling and registration systems that contain ownership guarantees and other information on the asset increases information symmetry and thereby reduces the property market's overall risk levels. By consequence, transaction costs are minimized and property markets become more *efficient* and therefore *transaction-enabling*. Thus, in theory, titling should not only facilitate and streamline property market activity, it should also bring down the overall prices of property.

Hence, with a mortgaged land plot or residential building and with investment and working capital at hand, a farmer or shop owner can improve his means of production via an investment into his assets, become more productive and generate a surplus which can serve to repay the loan and undertake further investments, outgrow subsistence and enter the market economy. At the society scale, De Soto (2001) claims that the legal security that land titling and registration provides will to turn precarious informal property rights holders into

entrepreneurs that will ultimately escape poverty and turn their real estate holdings into nuclei of economic growth and development.

Similarly to Demsetz' (1967 and 2002) work, De Soto's (2001) publication reaped heaps of laudations, it quickly became one of the most cited works in development studies, gained significant influence with national and global policy-makers and it remains influential in development theory and practice until this very day. However, the work contains numerous conceptual flaws (see e.g. Nyamu-Musemi, 2006 and van der Molen<sup>74</sup>, 2012 for a critical assessment of De Soto, 2001).

A common point of criticism is that De Soto (2001) projects conclusions that he has drawn from observations in a very distinct research setting, namely in the urban shantytowns of Peru's capital city Lima, to the world stage. This applies particularly to his claim that informal property contracts can by and large be translated into formal-legal environments at relatively little cost. This conclusion, again, stems from De Soto's (2001) observation that informal property rights and contracts in the shantytowns of Lima constitute approximate replications of the Peruvian formal-legal property codes, and from his resulting – erroneous – premise that informal property rights simply attempt to reproduce the formal-legal system wherever the latter is, for any given institutional, administrative, political or economic reasons, inaccessible to the society's poor.

Whereas De Soto's (2001) premise may hold in the urban settings of South American metropolises, this thesis would argue its critiques that it certainly does not hold in the rural settings of Sub-Saharan Africa. This is very much so because here, informal rights usually stand in long, generation-spanning traditions of socio-culturally ingrained tribal resource management systems that have not only co-evolved with the norms, customs, conventions and codes of conduct that guide and streamline the social interactions within the rural societies, but that also remain intrinsically interlinked with these<sup>75</sup>. As such, the property rights relations of

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<sup>74</sup> The most common points of criticism are summarized by van der Molen (2012) who cites six prominent points of criticism towards De Soto's (2001) theses, the most relevant of which for the context of rural North Kivu and comparable Sub-Saharan African societies are discussed below.

<sup>75</sup> This thesis will argue that the semi-formal property codes of the customary societies in North Kivu are by and large founded in tribal traditions, although they have been repeatedly and significantly modified in response to

rural societies in Sub-Saharan Africa are not readily translatable into modern, Western property law informed titling practices.

An additional line of criticism with regards to the applicability of De Soto's (2001) conclusions within Sub-Saharan contexts concurs with critical assessments of Demsetz' (1967 and 2002) work as discussed above, namely that the formalization of property rights achieves little where these rights cannot be enforced by strong institutions or where the formal-legal systems dispose of little popular legitimacy and are likely to be simply ignored or resisted. In fact, a number of authors such as Platteau (1996), Nyamu-Musemi (2006), Mastaki and Vake (2009) and van der Molen (2012) argue that instead of bringing tenure security to the poor, land titling programs may even lead to the contrary.

This can be due to any one of three factors: Firstly, the formal-legal property registration processes are complex, costly and sometimes ineffective or unreliable in many Sub-Saharan societies. Secondly, customary rights in these societies may comprise many more, oftentimes overlapping and sometimes very different types of land rights than those recognized by formal state law. Customary and formal rights are therefore oftentimes incompatible in their current form. Thirdly, the track record of institutional land governance is dismal in several Sub-Saharan societies (see for example Platteau, 1996, 1998, 2004 and 2009; Mastaki and Vake, 2009 and Pottek et al., 2016). As our own research suggests, the dismal governance record in the formal-legal land tenure systems is often linked to technical errors or willful falsifications in the registration and record-keeping processes (see Pottek et al. 2016). An effect of this institutional weakness is an overall tendency for formal land titles to accumulate with the social elites (Platteau, 1996; Mastaki and Vake, 2009).

A final argument that questions the predicted "capitalization" benefits of titling informal smallholder lands in many regions of Sub-Saharan Africa compares the monetary value of smallholder plots to the transaction costs implied in liquidating these lands in case of mortgage payment default. In this context, it is argued that smallholder plots are often too small, of too little value, too widely dispersed or too difficult to access from urban centers to

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social engineering efforts at the central state level both during the colonial and the post-colonial periods as well as in response to various types of informal influences.

be considered as mortgage collaterals. In many cases, the transaction costs implied in liquidating smallholder lands in case of payment default may easily approach or exceed the financial value of the land itself (see e.g. Platteau, 2000).

Despite the controversial debates over property conceptualizations (a *bundle of rights* versus a *monolithic block of exclusionary rights*, a *continuum* or a *tree*) and theories on property rights (two prominent examples of which I have discussed above), there is quasi-consensus in Western property rights philosophy over the social and relational characters of property rights<sup>76</sup>. As mentioned earlier, this was not always the case, as pre-Enlightenment and early Enlightenment era philosophies<sup>77</sup> leaned on the divine origin of all ownership<sup>78</sup>. It should also be noted that outside of Western traditions relational property rights conceptualizations are far from consensual; and where they do exist, they may be defined in entirely different terms. This counts particularly for societies that hold non-secular property rights philosophies such as, e.g. those founded on the Islamic Sharia, the Jewish Halakha, Catholic canon law or on certain tribal or other local customs in parts of Africa and Asia (see e.g. Benda-Beckmann, 2002). In several ethno-tribal cultures of North Kivu, for example, metaphysical references to the origin of the land and, by derivation, to the origin of all property rights are legion despite the fact that the

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<sup>76</sup> I would like to emphasize the prominence of social approaches without entirely neglecting contemporary interpretations of natural rights approaches to property law in Western thought. As mentioned above, these are very prominent in broadly held conceptualizations of “universal human rights”, in religious and other metaphysical conceptualizations of property rights, as well as in certain traditions of post-realist legal theory, political philosophy and classical economics. Nevertheless, for the purpose of this thesis I define property rights as “social” and “relational”. This means that property rights at large (i.e. the laws, regulations, norms, customs, conventions and codes of conduct that a society holds to regulate access rights to certain assets such as land) represent some sort of social contract between the members of a property rights defining society such as a state (in the formal legal context of a modern state, the latter would be defined in some sort of “property code”), whereas particular property rights (i.e. the property rights concerning a particular asset such as land) represent social relations between a rights claimant and the social authority that represents the concerned society in regulating access to that particular asset and that legitimizes and ideally guarantees and enforces the property rights in that particular jurisdiction.

<sup>77</sup> See e.g. Locke (1689; 1980).

<sup>78</sup> See e.g. Gratianus de Clusio’s *Decretum Gratiani* of 1140 and Pope John XXII’s 1328 bull *Quia Vir Reprobis* on the divine legitimacy source of property rights.

Christian and Islamic faiths as well as post-monotheistic secularisms have significantly diluted and altered pre-colonial belief systems since the beginning of the colonial era<sup>79</sup>.

Given the broad acknowledgement of the social and *relational* aspects of property rights in Western property rights philosophies, it appears incoherent that Western property rights theories tend to ignore the human and social relational aspects of property rights legitimacy and their foundation in the norms, customs, conventions, codes of conduct and, at times, metaphysical belief systems of the concerned societies. In fact, this omission also appears incoherent from historical perspectives, as it is widely acknowledged by legal anthropologists and legal historians that formal-legal property rights have always incorporated informal local norms, customs and conventions together with imported elements from elsewhere-established property codes and local ad hoc creations (Benda-Beckmann, 2002).

As previously discussed, the dominant approaches to property rights in Western thought hold that some sort of social authority is required to recognize a claimants' property rights. In the current global institutional environment, the social authority to define formal rights lies with the sovereign states (see e.g. Crawford, 2006). But the sovereign state system has only attained global quasi - universality in the second half of the twentieth century while most of the system's sovereign members are predated by the older property systems of their own tribal or other subnational constituent societies. It should come as no surprise then that these subnational constituents normally had their own, to varying degrees formalized legal and property rights systems<sup>80</sup>. For these *pre sovereign state* societies the property and other rights recognizing social authority had rested, depending on the particular socio-political model, with the community as a whole or with its traditional clannish, tribal, chiefdom, religious or national leaderships (see e.g. von Benda-Beckmann, 2002).

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<sup>79</sup>References to metaphysical sources of property rights legitimacy within some of the ethno-tribal cultures in North Kivu will be briefly discussed in the study area Chapter 6 as well as in the results discussion in the results discussion Chapter 7 of the thesis.

<sup>80</sup> In our research setting of North Kivu, the pre-colonial property and other rights systems of the local societies were, in fact, never formalized until some rudimentary formalization steps were undertaken in the colonial and post-colonial eras. A more profound discussion of the local pre-formal property systems will be provided in the study area Chapter 6 as well as in the results discussion Chapter 7 of the thesis.

As I have pointed out in the conceptual discussion Chapter 2, historical materialists rightly emphasize that state laws tend to serve elitarian domination interests and objectives. But the origin and purpose of state law does not end there. Pedersen (2010, pp. 138 -139) is right to describe property as “*normative protocols structuring social relations with regard to things*” and “*patterns of duties, rights, powers and privileges*” that are defined and legitimized by a society’s customs, norms, and conventions. An earlier work of Schurmann (1956, pp. 507) advances even several steps further by stating “*it is not wrong to say that the nature and intent of a society reveal themselves in the legal and customary concepts of property held by the various members and classes of that society (...) and the “history of property relations in a given society is thus, in a way, the history of the society itself”*”.

In most or possibly all of the world’s societies local, regional and global norms, customs, conventions and codes of conduct have been merged to forge legal systems under the influence and direction of powerful social elites (Benda-Beckmann, 2002). And, it is important to bring back to mind that the merging of local and foreign formal and informal elements including those from *proto-legal*, oftentimes *tribal* norms and customs into formal-legal systems is not a region-specific African or recent post-colonial phenomenon. Quite to the contrary, it has been practiced in European and other societies ever since the Early Middle Ages (see e.g. Ibbetson and Lewis, 1994)<sup>81</sup>.

Most of the post-colonial states that were founded during the second half of the twentieth century have in one way or another followed the examples of their European

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<sup>81</sup> In this context, it appears useful to highlight that most of the *older* sovereign states of Europe including colonial powers France, the United Kingdom and Germany have integrated elements of both previously established codified law and local (clannish, tribal, national, religious and other) customs into their own legal systems (see e.g. Ibbetson and Lewis, 1994 and Johnston, 1994). Furthermore, in all the above examples, Roman law or derivatives thereof served to establish the basic structure of codified law. In fact, all of the European law codes have been developed on a foundation of either civil or common law, at the heart of which are the world’s two most influential legal traditions, i.e. the English common law and the French *Code civil des Francais* (*Napoleonic Code*). Both of these traditions have amalgamated major elements of ancient Roman law (*Codex Justinianus* and *Corpus Iuris Civilis*) as well as lesser elements of feudal laws and customs, clannish, tribal and other local customs, Catholic canon law (*Corpus Iuris Canonici*) and a significant volume of own legal inventions into more or less comprehensive and continually evolving legal systems. In a subsequent series of steps these two traditions have served, via colonial and other forms of socio-cultural, legal and political exportation the majority of today’s sovereign states as more or less rough frames in the construction of their own contemporary legal architectures (see e.g. Ibbetson and Lewis, 1994).

metropolises in their own state formation processes by amalgamating important elements from the legal systems of their former colonial overlords with the pre-colonial legal or *proto-legal* customary rights frameworks of their subnational constituent societies (see e.g. Benda-Beckmann, 2002).

However, as (Boone, 2014) writes, in many of postcolonial African states such as the DRC there was little real amalgamation. Instead, many of these states chose to create *parallel* (instead of integrated) *dualistic* or *pluralistic* systems in which colonial metropole-derived formally coded law paralleled and imperfectly dominated largely unwritten *proto-legal* tribe-based and other local customs (see e.g. Herbst, 2000; Tull, 2005 and Boshab, 2007).

Far from any effective legal integration, the customs were assigned a parallel *junior* existence in the rural areas, and the states only selectively proclaimed or enforced their own legal codes wherever their own, very often particularistic interests were at stake (see e.g. Herbst, 2000; Tull, 2005 and Boone, 2014). In many cases, the *junior* semi-formality applied to large parts of the sovereign territory and significant parts of the populations. In the DRC, it is estimated that over 85 percent of the landmass harboring over 50 percent of the population are currently administered within these semi-formal property rights systems<sup>82</sup>. The role of the property rights integration processes and their outcomes as factor in the geopolitics of conflict in North Kivu represents one of the key concerns of this thesis.

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<sup>82</sup> See e.g. Tull (2003); also: series 1.1.1 and 1.4.2 interviews in Goma, 2012.



## 3 The Research Literature and the Disciplinary Nature of the Thesis

### 3.1 The Disciplinary Nature of the Thesis

As highlighted in the introductory section, this thesis is interested in the interactions between competitions and conflicts over access to the land resource and the larger conflicts at the communal, regional and interstate levels. As such, the thesis recognizes competitions over land as foundational key elements of both land tenure conflict, communal conflict and the wider civil and interstate conflict architectures of the region. However, this thesis is less interested by the links between the scarceness of the resource and the competitions that surround it than by the socio-cultural and (informal, semi-formal and formal) institutional factors that induce existing competitions around the land base to aggravate into conflicts on a first level and to interlink the conflicts over land to larger communal, regional and interstate conflicts on a second level. On a third and final level, this thesis is interested in the meaning of the land tenure system and the land related conflicts to empirical statehood in North Kivu, i.e. to the existence and expression of statehood in the thesis' research environment.

As such, the thesis is more interested by different levels of social interactions around the land base than by the direct society – environment interactions upon which the social interactions feed. Indeed, the analysis produced herein takes fierce competition in the local land markets, driven by mounting demographic pressure<sup>83</sup>, environmental degradation, uneven land distribution and rising land prices as exogenous *givens* i.e. as systematic factors upon which public policy has little immediate impact<sup>84</sup>. In the context of fierce competition for the

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<sup>83</sup> The intense competition for farmland in eastern North Kivu is primarily driven by local and regional demand. The high local demand in turn is driven by several environmental, socio-economic, cultural and political factors that are all intrinsically linked, but the largest single factor is population density. In fact, partially due to its moderate climates, low Malaria prevalence and highly fertile volcanic soils the eastern Kivu provinces have traditionally supported higher- than-average population densities. But due to immigration and, more importantly, natural population growth, eastern Kivu now disposes of some of the highest rural population densities on the African continent (see also the discussions in study area Chapter 6).

<sup>84</sup> This is not to argue that demographic, environmental and other scarcity related pressures on the land are independent of tenure regimes. But the potential impact of tenure regime policy on scarcity-related pressures is

land base, our research interest relates to the question how more policy-sensitive socio-cultural, socio-political and institutional factors channel the competitions and define their societal manifestations. In particular, I am motivated by the question how competition degrades along an imperfect escalation continuum via dispute to conflict, localised and regionalised violence and open warfare: what turns land market competitions into disputes? How is dispute resolved or aggravated? What escalates dispute into conflict? What provokes violence? And what makes conflict proliferate geographically and propagate institutionally throughout different socio-political spheres? Furthermore, how are these conflicts linked to the DRC's land tenure system? How does the land tenure complex including its property system and the conflicts that surround it relate to the debate on the state of *statehood* in Sub-Saharan Africa? And what are the institutional and geopolitical implications for the Congolese state?

The current thesis examines reciprocations between competitions and conflicts over land tenure and conflicts at the communal, regional and interstate levels. Thereby, the thesis connects topics that link environmental resource scarcity issues with socio-cultural and institutional issues at the micro level to interstate relations issues at the macro level. Hence, the thesis spans topics that are commonly analyzed by political anthropology, political ecology, political economy and legal (property) studies approaches to those that are more typically analyzed by political science, IR theory and classical geopolitics. The analytical vantage point of this thesis must therefore adopt multiple focal levels ranging from the village level where conflicts over land tenure and social identities take place to the levels of the regional and national capitals where civil and interstate conflicts are negotiated. In similar terms, the thesis' viewpoint must also cover different historical scales. The reason for this appears intuitive: the ongoing conflicts over land tenure, social identities and political resources in North Kivu have histories; and these histories continue to define the conflicts of the present.

The thesis therefore situates itself at the inter-disciplinary crossroads between political ecology, political economy, property law, sociology, political science, IR theory, political

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much less direct than, for example, the impact of policy on the expression of tenure competition, dispute and conflict (see e.g. Boone, 2014).

anthropology and history. Its home domain however, necessarily integrates the relevant elements from all of these approaches.

The wide splay of specializations and research fields displayed in the geography departments of the world bears witness to geography's strong interdisciplinary links with a multitude of other disciplines. Geography draws from a wide range of disciplines and it studies the expressions of various sciences' paradigms and theories in space and time. Within the latter, the sub-field of political geography analyses the spatial expressions of political phenomena. Studies in political geography have been concerned with subjects as diverse as the organization of the world into states and regions, relations among states and regions, the state's division into administrative sub-units, core-periphery relations, spatial arrangements of population distributions, administrative and political organization, voting patterns, local and international trading patterns and their legal regulation, regionalisms and separatist movements (Renard, 1997).

Geopolitics occupies a relatively small niche within the broad field of political geography. With an initial key focus on the territorial competitions between the world's major powers, the early geopolitics synthesized elements from cartography, physical and human/political geography, military geostrategy and both materialist and realist approaches to international relations (IR) theory. This early geopolitics developed as a functional *statesman* discipline that served the late 19<sup>th</sup> and early 20<sup>th</sup> centuries' Western state elites as theoretical foundation and tool to devise mostly expansionist territorial strategies for the states that they ruled.

However, discredited in name by its wedding to Social Darwinism by Ratzel (1897; 2016), Kjellen (1917) and Haushofer et al. (1928) and by its subsequent integration into National Socialist ideology, geopolitics disqualified itself as an academic discipline after the Second World War. But the geostrategic interpretations of geopolitics as a geographic and political discipline of territorial strategy continued to centrally inform both realist and

materialist international relations theories on both sides of the Iron Curtain throughout the Cold War period and beyond (Dodds, 2007)<sup>85</sup>.

More importantly for the purposes of this thesis, towards the end of the Cold War period, geopolitics was reinterpreted as a sub-discipline of geography. This reinterpretation was led by the French geographer Lacoste (1976) and quickly spread to Anglophone and Germanophone geography departments where it spawned a broad spectrum of new approaches to geopolitics that all explicitly distanced themselves from the *statesman* aura of the functional central state servant that the early geopolitics' progeny had become. These new approaches to geopolitics include Lacoste's (1976) critical geopolitics, Wendt's (1992) constructivist geopolitics, subaltern geopolitics and feminist geopolitics.

This thesis positions itself in the gravitational field of critical geopolitics as described in comparable terms by Lacoste (2006) and Gonon and Lasserre (2001). For Lacoste (2006), geopolitics represents "*tout ce qui concerne les rivalités de pouvoirs ou d'influence sur des territoires et les populations qui y vivent ...*" (Lacoste, 2006; audiofile, see reference section) while for Gonon and Lasserre (2001, pp. 112) geopolitics is "*l'étude des différents types d'enjeux de pouvoir et d'identité sur des territoires et sur les représentations qui leur sont associées*".

In more descriptive terms Gonon and Lasserre (2001; pp. 112) highlight the interdisciplinary character of critical geopolitics in the following terms:

*"Si la géopolitique peut être un savoir scientifique, qui combine les apports de différentes disciplines, elle se définit par son objet d'étude qui la distingue des autres branches de la géographie. Une formulation générale consiste à définir la géopolitique comme l'étude des différents types d'enjeux de pouvoir et d'identité sur des territoires et sur les représentations qui leurs sont associées".*

With the above formulation, Gonon and Lasserre (2001, pp. 112) add two important features to the definition: namely that firstly, social identities and different levels of state and non-state power relative to territory are at the heart of geopolitical analysis and that secondly, the representations of involved actors play key roles therein. This implies that the actors even

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<sup>85</sup> See for example the works of Spykman (1942) Brzezinski (1962) and Kissinger (1969; 1974).

at the lowest power levels of geopolitical competitions are not simply passive pawns in structural games, but rather interactive players with varying degrees of influence on the outcomes. Possibly even more important is the second-level implication that all actors in the competitions are of academic interest in their own rights and not exclusively in their roles as elements of larger territorial competitions that are ultimately centered on the central state.

Therefore, in contrast to structural approaches, critical geopolitics analyses conflict and cooperation dynamics in the lower strata of political society. In this often less formalised environment, it recognises the significance of actor representations not only as direct expressions of stakes and claims in supposedly rational negotiation processes, but also as – often highly subjective – bases of legitimization, identity formation and client mobilisation. In this perspective, Dodds (2001, p. 473) employs Anderson's (1991) imagery in pointing to the discursive construction of *imagined communities* in the context of everyday life. To capture the latter, I follow the growing number of geopolitics scholars such as Dodds (2001) and Batson (2008) that encourage fieldwork and ethnographic research at the grassroots levels of state and non-state societies as tools of identifying and assessing those ultimately geopolitical experiences of ordinary people that inform the construction of social identities, social identity-based groups and the power struggles that surround these.

## **3.2 The Research Literature**

### **3.2.1.1 The Literature on Conflict in Africa, the Great Lakes Region and North Kivu**

The literature on conflict in Africa gravitates towards four poles: Firstly, a heterogeneous group of traditional *positivist* (neo-realist, institutionalist and neo-liberal) international relations (IR) theory approaches to conflict studies, secondly, a similarly heterogeneous group of neo-Malthusian approaches (mostly from political economy, human ecology and environmental studies backgrounds), thirdly, a rational choice theory-founded economist approach, and fourthly, a heterogeneous group of constructivist, holistic and “critical” approaches from disciplines as diverse as international relations (IR) theory, constructivist and critical geopolitics, political ecology, political anthropology, political sociology, history, and civil law. The approaches and their most relevant literature will be discussed in the following paragraphs.

### 3.2.1.2 Strengths and limitations of political realism in African conflict studies

As highlighted in the conceptual discussion section 2.5, realism and other structural IR approaches are primarily interested in the interactions and capabilities of what they perceive as strong states that vie for regional or global hegemony. Hence, for realist and other structural IR approaches political events on the African continent represent sidelines to the geopolitical competitions between the world's global powers in North America, Europe and Asia, in which African conflicts tend to play only secondary roles unless global interests are affected via, for example, bottlenecks to the supply chains of strategic natural resources or global security threats posed by international terrorism or the illicit trade in drugs or arms.

Nonetheless, realism has a role to play in my analysis of land tenure and conflict in North Kivu. This is because its geographic wide-angle lens draws attention to important elements of statehood and control in Sub-Saharan Africa at large. Examples for pertinent works from realist angles are those of Jackson and Rosberg (1982) Jackson (1990) and Herbst (2000), all of which emphasise that many African states have strong, international convention-based *de iure* existences that serve as cover ups for weak and hollowed out *de facto* existences (see also the discussion on statehood and the state in the conceptual discussion Subchapter 2.5).

Before this context, the seminal work of Herbst (2000) picks up on physical and political geography-related factors (that were briefly highlighted in the conceptual discussion Subchapter 2.5 of this thesis) emphasised in earlier works by Brustein and Margaret (1987) and later by Toft (2003) that demonstrate how polity size, relative distance and sparse or very unevenly distributed population patterns constitute challenges to territorial control. Herbst (2000) posits that many of the weaker states on the African continent are unable to meet these challenges.

Herbst (2000) and other realist authors have been rightly criticised from different angles for geographic determinism or a lack of regard to important historical and sociological factors in their equations of territorial control (see e.g. Robinson, 2002 and also Boone, 2014). Nevertheless, their work deserves acclaim for pointing out the proverbial *elephant in the room* that is, despite its conspicuous size, oftentimes overlooked in the literature on statehood in Africa: the challenge of territorial control that many regions on the African continent pose to

the post-colonial heirs of large and oftentimes demographically and ethno-demographically incoherently populated countrysides.

It is certainly true that the challenges posed by factors such as state weakness, population densities, territorial expanses and relative centre-periphery distances are no determinants of state weakness and state failure. Nevertheless, it appears intuitive that all of these elements do play important roles in defining the choices that states have at their disposal to effectively rule (*de facto*) the territory that they claim (*de jure*) as theirs. Indeed, this reading is underpinned by several witnesses of history that have highlighted the obstacles in extending the reach of the colonial state into the rural African countryside (see e.x. Lugard, 1965). Given the widely attested weakness of many of the African postcolonial states (see e.g. Bayart, 1989; Tull, 2005; Young, 2010), it appears as no far stretch to argue that the latter have been confronted with similar obstacles to controlling their inherited territories.

The relevance of the discussion on statehood and its territorial ambitions lies in the fact that two key arguments of this thesis are firstly, that the DRC has long used its land tenure regime as a means to project *indirect rule* into regions that lie outside the radius of its direct and continuous state power projection capabilities and secondly, that the effectiveness of the *indirect rule* system has long been both eroding and undermining community relations in North Kivu.

Neither of these statements is inconsistent with central tenets of realist authors such as Herbst (2000), Jackson and Rosberg (1982) and Jackson (1990). However, the insufficiency of their analysis lies in the fact that beyond their references to life-prolonging global sponsor networks, they have few explanations as to why indirect rule, neopatrimonialism and other asymmetric systems of state rule are quite stable in some societies whereas they break down in others. These, however, are central questions to the understanding of the many Sub-Saharan polities that, as the realists correctly emphasise, are oftentimes incapable of establishing anything that comes even close to a direct force monopoly over the territory that is *de jure* theirs.

Gonon and Lasserre (2001) write that no state is a homogenous body politic and this statement strongly resonates with this thesis. And as several Africanists including the above-

cited realists emphasise, many Sub-Saharan states are particularly heterogeneous, and oftentimes very incoherent constructs. Some of them, such as Botswana, appear quite stable and successful, whereas others, such as the DRC appear instable and shaken by internal conflicts.

Hence, the answer to the state question lies not in physical geography but rather in the complexities of the social world. Given the heterogeneity of African states such as the DRC, it appears of critical importance that a geopolitical researcher adopt multiple focal lenses that aggregate bird's-eye views of institutional structures and interstate relations with close-up views of those sub-state entities that exercise power and control at the local levels. This finding is in line with statements from constructivist scholars such as Wendt (1992 and 1999) and Tull (2005), as well as with critical scholars such as Lacoste (1976 and 2006), Gonon and Lasserre (2001) and Dodds (2007). Realism has important contributions to offer at the widest of all lens angles, but it lacks theoretical and methodological pertinence at the narrower ones.

### **3.2.1.3 Ethnic instrumentalism in historical materialism and the *conflict cap* hypothesis**

As pointed out in the discussion of realist approaches, Africa's relative lack of influence on the global political stage has resulted in its partial neglect by structural IR theories such as realism. For similar reasons, conventional approaches in historical materialism have reserved a similar underprivileged role to the African continent: the latter largely appears as a passive player in history that is mostly subjected to outside forces such as colonial-era imperialism and post-colonial globalised capitalism, in which the continent, its populations and societies fill externally dictated roles that are mostly designed by the global elites at the world's geopolitical core (see e.g. Marx and Engels, 1846; 2016; see also Wallerstein, 1986 and 2004 for more recent and more developed historical materialist perspectives on global core –periphery relations and the role of African states and societies in the latter).

More recently, a new approach to historical materialism in political economy has offered a readjusted focus on the economic and political power relations within African societies, their political systems and their sub-state components. An important work in this category is that of Boone (2014), which analyses the roles of rural administrations and land



tenure systems as modelling agents of social conflict in Africa. Most notably, Boone (2014) contradicts the realist tenet that sub-state indigenous politics and customary administrations serve chiefly as conduits of central state rule into country-sides that otherwise escape direct state control.

For realists, state control is an end in itself, whereas for materialists, state control is a means of material exploitation. In this logic, Boone's (2014) analysis of land tenure and communal conflicts in eight Sub-Saharan countries including Kenya, Rwanda and the North Kivu region of the DRC leads her to conclude that African central state elites have little interest to actually control the rural countryside. Their interests are much rather directed to individual asset clusters within the latter. The role of the customary politico-administrative structures that form the bases of many rural administrations in Sub-Saharan Africa rather serve as filters or relays to an inversely poled, bottom-up exertion of political force between the rural populations and the central state. Boone (2014, pp. 54) calls this the *capping* of social conflict, which from her vantage point serves to harness the fear by colonial and postcolonial state elites of a *detrified* Africa that develops a class conscience and threatens the state elites.

But although closer to the realities at the grassroots level than more conventional approaches in historical materialism, this on the drawing board appealing interpretation remains extremely structural in that it knowingly ignores the roles that Africa's rural populations have played and continue to play in the design of their political environments including that of their own rural administrations. In this context, it appears relevant to point to Platteau (1996), Kalabamu (2000), and Nyamu-Musemi (2006), Mastaki (2005) and Mastaki and Vake (2009) that all insist that ethno-tribal land administrations tend to be also rooted in local logics of human-land relations and therefore also in the norms and customs that have oftentimes grown out of these over generations.

The reason why this literature discussion is dedicating several paragraphs to Boone's (2014) work is that it constitutes an innovative reinterpretation of historical materialism in an application to social contexts (mostly rural agricultural societies) and regions (western, central and eastern Sub-Saharan Africa) that are rarely examined from this vantage point. However, Boone (2014) neglects several socio-cultural and socio-political key elements of the local

contexts to which she applies her model, namely, as Platteau (1996), Kalabamu (2000), and Nyamu-Musemi (2006) and Mastaki and Vake (2009) hint that ethno-tribal land administrations tend to be rooted in local logics of human-land relations and therefore also in the norms and customs that have grown out of these over generations.

Certainly, Boone (2014) is right in her claim that today's customary administrations are mostly hybrid products that have, at least in part, been repeatedly de- and reconstructed under the pressures from colonial and post-colonial administrations. This restructuring is discussed on several examples from North Kivu in this thesis' hypothesis discussion Subchapter 7.2. However, authors such as Baldwin (2016) rightly underline that although certainly not unaltered by the ever-changing forces of the time, the customary systems and the mostly hereditary elites that preside these have not only survived decades of violent communal, civil and interstate conflicts, but they have also outlived a series of successive colonial and postcolonial political regimes. From my point of view, the longevity of the customary systems constitutes in and by itself a strong indicator that the customary land administrations are not simply tools for the preservation of Africa's central states and their capitalist elites. But rather that they are products, or at least co-products of their very own, inherent logics and circumstances as well.

This thesis would therefore argue that the comprehension of the roles of the semi-formal sector, the customary administrations, their hereditary elites and the customary land tenure regimes as elements of the local and regional geopolitics of peace and conflict requires much more than a structural *one-size-fits-all* model. It requires coherent close-up and bird's-eye views of the subject of interest itself.

#### **3.2.1.4 Resource grievances and ecoscarcity in the conflict studies literature:**

In contrast to realism, other structural IR theories and historical materialism, *eco-scarcity* and other Malthus-inspired *resource grievance* approaches to conflict studies in political economy, political science, human ecology and environmental sciences are very much interested into local perspectives of conflict. The interest of these approaches lies primarily with causality links between factors related to environmental resource scarcity and violent conflict. Several pertinent works from these approaches link violent conflict in

developing world regions such as Central and Great Lakes Africa via dense and increasing population densities, resource overexploitation and environmental degradation to environmental resource scarcity, i.e. *ecoscarcity* and poverty<sup>86</sup>.

Retrospectively, it may appear more than coincidental that most of the neo-Malthusian and eco-scarcity informed works on Sub-Saharan Africa were authored between the late 1980s and early 2000s when violent conflicts in the Great Lakes region, the Horn of Africa, parts of West Africa and the southern lusophone states were even more widespread than they are today. Several authors such as Wils et al. (1986) and Kaplan (1988, 1994 and 2013)) interpreted aggravating conflicts in East and Great Lakes Africa as precursors of regional catastrophes that would inevitably lead to long-term population decline as resource pressures increased alongside fast-growing populations and regionally interlinking conflict nexuses.

But whereas the 1990s and early 2000s appeared to confirm the ecoscarcist Cassandra calls, the following years witnessed a slow but pronounced ebbing down of violent conflict in most of the affected regions in Africa. And what is more, despite the fact that Rwanda's population has nearly doubled since the mid 1990s and adjacent regions such as Burundi, southern Uganda and eastern DRC have experienced comparable population growth rates, violent conflict has declined in most of these regions. But as this thesis will discuss in some detail, parts of North Kivu and adjacent regions have somewhat bucked this overall positive trend (see Stearns, 2013 and Stearns and Vogel, 2015). And the reasons for this do not lie primarily in ecoscarcity-related matters, but rather in social matters that I will discuss in some detail throughout the thesis' main discussion Chapter 7.

In analogy to several points of critique that are sometimes directed at the realist approaches discussed earlier, ecoscarcist and neo-Malthusian approaches are rightly criticised for their leaning towards environmental and geographic determinisms. Chojnacki and Engels

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<sup>86</sup> See e.g. Wils et al. (1986) for a prediction of ecoscarcity-triggered conflict and catastrophic population decline in eastern DRC, Homer-Dixon (1991, 1994 and 2000) and Percival and Homer-Dixon (1996) for an interpretation of conflict in developing world societies including Rwanda from an ecoscarcity perspective; see also Kaplan (1988 and 1994) for publications on resource scarcity and conflict in eastern Africa and other parts of the developing world and finally, see Gasana (1997) and Baechler (1999) for publications that interpret the Rwandan genocide in large parts as a consequence of farmland shortages and other elements of resource scarcity in Rwanda.

(2013, page 12), for example, astutely denounce that a striking amount of recent conflict studies literature falls “*straight into the spatial trap that geography has struggled to liberate itself from*”. Environmental resource scarcity carries no deterministic implications for the way that humans negotiate their resource competitions.

Hence, ecoscarcity constitutes no immediate cause for resource conflicts. But it certainly constitutes an immediate cause for resource competitions. Competitions, in turn, may easily evolve into conflicts if they are not embedded into systems of shared norms, customs and widely recognised institutions. Whereas it is truly relevant for any social conflict analysis to examine the competition-underlying resource base, it is of similar importance to examine the channels that lead from competition to the different levels of social and political conflict. These channels, it appears, are oftentimes neglected by ecoscarcist and other neo-Malthusian approaches.

Nonetheless, ecoscarcists and other neo-Malthusians offer important impulses to the analysis of conflict in *livelihood resource-poor* societies by directing the attention of conflict studies to underlying resource competitions, as well as to the human suffering that accompanies the latter in some of the most extreme cases. Several studies in political ecology (see e.g. Le Billon, 2001, 2003 and 2005; Dunn, 2005 and Le Billon and Hocquard, 2007) that heed particular attention to the role of natural resource competitions in conflicts on the African continent (and particularly those that have contributed to the development of the argument in this thesis) will be discussed in the subsection on constructivist, critical and other *holistic* approaches to conflict studies on the African continent that is about to follow (after the coming section on the *greed* and *conflict trap* literature).

### **3.2.1.5 The *greed* and the *conflict trap* literature in conflict studies**

As highlighted above, until the late 1990s, most approaches to conflict studies that linked conflict to natural resources had focused quasi-exclusively on grievances as drivers of conflict. But by the late 1990s, a growing number of scholars observed that armed communal and civil conflicts were oftentimes proliferating within poor societies that disposed of important measures of readily exploitable point source natural resource wealth (see e.g. Fearon and Laitin, 1999; Collier, 2000; Collier and Hoeffler, 2002; Blomberg and Hess, 2002;

Murdoch and Sandler, 2002; Toft, 2003; Collier et al, 2003). It was largely in this context that the term *natural resource curse* entered common usage in the conflict studies literature although in its origin, its author Auty (1993 and 2005) had coined the term as a designator of macroeconomic causality links between natural resource wealth and economic underdevelopment in non-industrialized societies. The initial findings of the *greed* and *conflict trap* literature then developed the dyadic link into a triangular causality that connected point source natural resource wealth to poverty and armed conflict.

The *greed* and *conflict trap* approach had a momentous impact on the African conflict studies literature as well as on communal and civil conflict oriented international policy-making at the turn of the millennium. The heyday of this influence coincided with a period in which numerous particularly violent and oftentimes very rural conflicts had proliferated inside extremely poor but natural resource rich African countries such as Sierra Leone, Liberia and the DRC. This period also coincided with the years 1998 to 2003, in which the approach's most prolific author, Collier (2000 and 2008), was director of the World Bank's Development Research Group.

The *greed* and *conflict trap* model broke in two ways with the earlier *grievance-centered* models in that firstly, it proposed *greed* as a more powerful conflict motivator than *grievance*. Secondly, the model added several key concepts from classical micro-economics, namely *opportunity* and *opportunity cost*, as well as from political realism, namely Weber's (1922; 2002) force monopoly paradigm, to the conflict equation: In socio-political environments where weak central states lacked coercive power and simultaneously poverty spatially coincided with point source natural resource wealth, a simple cost-benefit analysis lead the greedy to take up arms in search of material wealth.

The rationale behind this cost-benefit equation is simply that looting warfare that preys on easily exploitable point source natural resource wealth can be carried out at relatively low cost within the weakly controlled territorial boundaries of many Sub-Saharan states. Looting warfare can therefore offer the most alluring economic options where few comparably lucrative alternatives exist.

What is more, the economic incentive landscape that favours looting and preying over productive economic activities generates self-perpetuating *conflict traps* wherever more than one party seeks to pocket the looting booty and where none of these are powerful enough to dominate the contested territory, its populations and its natural resource wealth and to impose itself as physical force execution monopoly and tax-levying authority. The resulting conflict trap can only be overcome by a *commitment technology* such as an enforceable central state-based power-sharing agreement that allows the major combatant parties to jointly share the much greater profits implied in the governance of a state and that thereby alters the incentive landscape such that cooperation becomes more lucrative than conflict (see e.g. Collier, 2000; Collier and Hoeffler, 2002; Collier et al. 2003; and Collier, 2008).

#### **3.2.1.6 Constructivist, critical and other holistic literature works on conflict in the African Great Lakes region: The most important contributions and their limitations**

While recognising economic conflict incentives, constructivist, critical and other holistic approaches (see e.g. Wendt, 1999; Tull, 2005 and Vlassenroot and Huggins, 2005) rightly dismiss mono-causal conflict theories that reduce the political world of conflict to resource maximization considerations. In the geopolitical contexts of the Great Lakes crisis, the Congo Wars and related regional conflicts where narratives of socio-cultural identities, language, land and tribal, ethnic and national belonging consistently fill the political discourses of peace and war, a materialist conflict analysis cuts out half of the picture and is therefore too reductionist.

For example, in recognizing the contributions of the *greed*-focused literature to an understanding of civil conflicts in the Great Lakes region and other parts of Sub-Saharan Africa, Le Billon (2001 and 2005), Dunn (2005) and Le Billon and Hocquard (2007) pick up on the debate over point source natural resource wealth as conflict driver. But while stressing the *greed*-related incentive setting role of easily extractable natural resources, the authors simultaneously point to economic and ecological grievances linked to the growing scarcity of farmland in some of the affected regions on the African continent. One argument is that the diminishing availability of the traditional farming resource base incites land-poor farmers to

seek economic alternatives in more lucrative, though highly precarious activities such as artisanal mining, looting, robbery and mercenarism.

Greed and grievance therefore constitute interconnected factors within the same socioeconomic equation that presents itself to the people in areas affected by resource scarcity and conflict. But the authors also hint that changing economic resource equations (such as those implied in decreasing farming options versus increasing warring and looting options) also impact on the socio-political equations that are defined by the distribution of influence and political power. Transformations of the latter necessarily produce winners and losers, changing social identities, norms and customs, as well as new logics of economic and political competition and conflict.

The authors highlight these important changes, but they do not explore them in any meaningful detail. My research indicates that socio-culturally defined norms, customs and social identities represent central aspects of many conflict rationales in North Kivu. The conceptual discussions in Subchapters 2.2 and 2.6 have highlighted that although fluid and malleable, social norms, customs and identities are by and large founded in a community's history. By consequence, an understanding of norms, customs and social identities requires an analysis that rests on a footing in local and regional history.

More history-founded conflict analyses are offered by Lemarchand (1997, 2001 and 2009) and Prunier (2008), both of whom contextualise the decades-spanning series of ethno-political conflicts in Rwanda and Burundi, the in parallel-occurring series of conflict-driven migrations of Rwandan and Burundian nationals into the two Kivu provinces, the role of these migrations in heightening competitions for land and other resources in the eastern Kivu region, the slow devolution of the Zairian state towards the end of the Cold War period as Western clientship payments progressively melted away, the Rwandan civil war and the genocide of its Tutsi population during the early 1990s, the emigration of nearly the entire genocidal MRND state apparatus along with approximately 1.5 million Rwandans into the Kivu provinces, the ensuing transposition of the Rwandan conflict into Zaire (now DRC) in 1994, the aggressive

negotiation of security, political and economic interests by the newly-installed Rwandan FPR<sup>87</sup> regime and the military and political interventions by Rwanda and other regional neighbours in eastern DRC that ignited the two Congo wars and that helped to feed the mineral extraction-based commercialisation of the Second Congo War (the RCD war) as well as ongoing conflicts over mineral and other resources that lasted throughout the post-war decade and, in fact, although at a lower level of intensity, until this very day.

In their regional analyses, Lemarchand (1997, 2001 and 2009) and Prunier (2008) arrive at quite similar conclusions, several of which are supported and adopted by this thesis in its own analysis of the more or less recent historical aspects of regional geopolitics. The strengths of these works lie in their detailed portrayal of the decades-spanning evolution of regionally interconnected conflicts and the stakeholder interests at the macro- and meso-levels of the involved societies. Possibly the only major drawback of their analysis lies in the fact their focus essentially remains at the macro and meso levels. As such, Lemarchand (1997, 2001 and 2009) and Prunier's (2008) works tend to overlook the multifariousness of micro- to meso-level conflicts over land tenure and their key roles as driving forces of the past regional conflagrations. I would argue that for a better understanding of the regional geopolitics of peace and conflict a more detailed view of the elements that drive the rural conflicts in the villages is required, as well as a closer regard for the ways that these interlink with the more visible conflict dynamics at the surface.

More so than Lemarchand (1997, 2001 and 2009), Reyntjens (1999, 2001 and 2009) examines the two Congo wars and surrounding conflicts with a focus on the regional capitals, and with a particular emphasis on the involvement of the Rwandan FPR regime in the Congo wars. The strength of Reyntjen's (1999, 2001 and 2009) work lies in its astute depiction of the Rwandan FPR regime as an active player in the regional geopolitics of conflict during the mid to late 1990s and the first post-millennial decade. Reyntjens (2001 and 2009) exposes not only commercial and military ties between the regime in Kigali and numerous non-state armed groups (NSAGs) in the DRC but he also convincingly expands the analytical scope of UN

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<sup>87</sup> The *Front Patriotique Rwandais* (FPR) is the previous Rwandan rebel force and current political party that had ousted the *Mouvement Révolutionnaire National pour le Développement* (MRND) regime after the Rwandan genocide in 1994 and that has governed Rwanda ever since.



sponsored studies (see e.g. UN, 2002) on Kigali's involvement in the regional trade of illicit minerals and other substances.

However, Reyntjens' (2001 and 2009) analyses remain strongly fixated on the regional capitals, and particularly on the FPR regime governed capital of Rwanda (Kigali), to which Reyntjens (2001 and 2009) more or less implicitly attributes the role of a regional hegemon. Whereas comparably powerful as the most agile central state force in North Kivu's immediate environment throughout much of the last two decades, Kigali's regional influence is far from monolithic (see e.g. Tull, 2005; Prunier, 2008 and Lemarchand, 2009). In fact, Kigali's regional reach is counterbalanced by other regional actors such as Uganda, Tanzania and the central state in Kinshasa, as well as by an international community that has used its financial leverage to compel Kagame's regime to cooperate with the UN's regional agenda on several occasions. But it is even more so because Kigali has never, not even in the heydays of the RCD-Goma's rebel rule, succeeded at establishing a profound and lasting penetration of North Kivu's rural countryside (see e.g. Bucyalimwe-Mararo, 2001; Lubala-Mugisho, 2001; Tull, 2003 and Prunier, 2008) and hence, it appears only too eye-catching that Kigali has consistently failed not only as a regional, but also as a local hegemon only a few miles from its tenuous border with the Congo.

It is also for all these reasons that I would argue that any regional conflict analysis would profit from a deeper-going preoccupation with the directly involved actors and stakeholders of rural conflict *on the ground* and their immediate physical, socioeconomic and political environments. This is not only because the rural villages of North Kivu hosted most of the armed conflicts during the two wars and the two rebellions that followed suit, but also because here, even fourteen years after the formal end of the Second Congo War, armed conflicts remain extremely widespread.

Certainly, there should be no doubt that the two Congo Wars - and, to lesser degrees also the two CNDP<sup>88</sup> and M23<sup>89</sup> successor rebellions - were very much defined by their main

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<sup>88</sup> The *Congrès National pour la Défense du Peuple* (CNDP) was a Tutsi-dominated rebel force that formed in June 2004 under Laurent Nkunda. Its military wing was officially integrated into the FARDC under Bosco

players' connections to the regional capitals (and particularly to Kinshasa, Kigali and Kampala) and the continued threats that still emanate from the FDLR<sup>90</sup> fighters and possibly also from remnants of the CNDP and the M23 are testimonies to the lasting impact of both the Rwandan MRND regime's genocidal ideology and the Rwandan FPR regime's aggressive foreign policy. But Rwandan politics are only one, though very import, element in a much larger equation. It is the aim of this thesis to examine some of the less studied parts of this equation.

A number of scholars have responded to the need for additional local knowledge by digging deeper into local and oftentimes rural aspects of conflict. For example, in his analysis of the transformation of political order in societies affected by violent conflict in Africa, Tull (2003 and 2005) draws on field studies carried out during the final phase of the RCD conflict and the immediate post-war environment in North Kivu. His analysis of continuities and change of the political order in North Kivu during the years of the RCD war leads Tull (2003 and 2005) to conclude that pre-war and war patterns of order were very similar.

Indeed, one of Tull's (2003 and 2005) key conclusions is that from the beginnings of the postcolonial era via the Mobutu period right to the Rwandan-sponsored RCD rebel state, in a quest to extend a certain amount of control throughout its territory, each successive example of central governance was required to build neopatrimonial networks of formal institutional, semi-formal (customary) and informal (private) agents right down to the rural grassroots level in North Kivu. This meant that the state was present and ultimately, though to varying degrees, also powerful in outlying areas. But its control was indirect, through patrimonial network alliances with agents who, by and large, furthered the interests of the central state, but who at the same time, negotiated these interests in terms of their own, at times conflicting, agendas.

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Ntaganda in 2009 whereas its political wing became a small political party with a regional, primarily ethnic constituency in North Kivu.

<sup>89</sup> The *Mouvement du 23 Mars* (M23) was a Tutsi-dominated rebel force initially led by Bosco Ntaganda that was, like its predecessor the CNDP, based at the crossroads of Masisi and Rutshuru territories. The M23 fled the DRC and officially disbanded in Uganda in December 2013 after suffering heavy military losses at the hands of the FARDC and the UN's Force Intervention Brigade (FIB).

<sup>90</sup> The *Forces Démocratiques de Libération du Rwanda* (FDLR) is an ethnic Hutu militia in eastern DRC that has its origins in the *Mouvement Révolutionnaire National pour le Développement* (MRND) regime that had governed Rwanda from 1975 to 1991 and that had been centrally responsible for the Rwandan genocide.

This thesis builds on this particular conclusion of Tull's (2003 and 2005) work, namely that all successive states in the Congo were forced to fall back on existing semi-formal and informal rural structures in order to establish state control in the countryside. Tull's (2003 and 2005) conclusion, in turn, ultimately builds on a central tenet of Herbst (2000) who claimed that Sub-Saharan states in general dispose of little territorial control because their power projection capabilities are limited and, by and large, completely incongruent with the physical sizes and shapes of their national territories. Tull's (2003 and 2005) analysis is much more nuanced than that of Herbst (2000) in that it builds its argument primarily on social matters, but it also builds on Herbst's (2000)<sup>91</sup> African power projection dilemma and therefore on the geopolitical realist equation that compares force projection capability to physical geography (see the discussion of realist literature earlier in this chapter; see also the conceptual discussions on state and statehood in Subchapter 2.5).

Several other authors have, explicitly or implicitly analysed political rule in the Congo from similar perspectives, namely from perspectives that examine the ways in which one particular or several successive expressions of statehood have negotiated their limited capabilities to extend state rule over the DRC's vast territory.

For example, the Congolese scholar Diangitukwa (2001) provides an astute analysis of the way that Mobutu's Second Republic constructed, maintained and recycled patronage and clientelism networks throughout its territory. In vivid images, Diangitukwa (2001) describes how particularly in the later years of Mobutu's reign, the Zairian state's incapacity to directly rule the countryside forced it to negotiate costly neopatrimonial alliances with semi-formal and informal rural stakeholders as both building stones and ultimately also as consuming elements of the Second Republic. Beyond the customary authorities that had long served to project central state power into outlying rural areas via their control over the rural land base, business organizations, militias and outright gangsters progressively served to extend Mobutu's rule into the countryside. According to Diangitukwa (2001), the cost of maintaining

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<sup>91</sup> It appears expedient to note here that the idea of the power projection dilemma predates Herbst (2000) by several centuries and it has its roots in British theories of indirect colonial rule (see e.g. Lugard, 1965). However, Herbst (2000) rekindled the discussion on the power projection capabilities in the context of postcolonial African states that were progressively seen as threats to Western security interests since the implantation of Al Qaida in Somalia and Afghanistan during the 1990s.

these increasingly complex and insatiable alliance networks finally led to the collapse of the Zairian state.

This thesis absorbs elements from both Herbst's (2000) realist power projection dilemma and Tull's (2003 and 2005) and Diangitukwa's (2001) sociological responses that the utilisation of customary structures is, in continuity with the colonial and post-colonial pasts, a major part of the Congolese state's response to its own capability dilemma. But this thesis attempts to venture into the finer lines of the picture and explore how this relation between the central state and the customary structures has worked in the past and how it continues to work in the presence. The thesis is particularly interested by the tools that the alliance uses and by the way that their usage influences and is influenced by inter-communal relations over land rights and social identities.

One Congolese author that provides several insights into these relations is Bucyalimwe-Mararo (1990 and 2001) who analyzes the recycling of clientelist networks between the Mobutist central state and rural agents including customary authorities and commercial landholders during the 1970s and early 1980s, when the building blocks were laid for many present day conflict constellations. The author examines the Zaïrianisation period of the early 1970s and demonstrates how the central state's rural alliance engineering efforts culminated in the mammoth sale of colonial (mostly agrarian but also forestry and mining) assets chiefly to prominent members of the Tutsi community. As agriculture-based small-farm communities made up the majority of the population in Kivu, these land transactions concentrated land wealth with a small circle of elites from one of North Kivu's smaller and oftentimes popularly ostracised ethnic groups; and it simultaneously led to in-depth transformations of the agricultural landscape (much of it was turned into pastures). Bucyalimwe-Mararo (1990 and 2001) explains how both of these effects heightened pre-existing conflicts over land ownership and land usage in North Kivu.

On a second level, Bucyalimwe-Mararo (1990 and 2001) also shows us how the sale of already controversial colonial land assets to members of an ethnic community that many residents of North Kivu perceived as non-Zairian *foreigners* became an instrument in the *citizenship controversy* that permeated the electoral campaigns of the early 1990s and led the transitional parliament to adopt a resolution to expropriate and expel the Tutsi and other

rwandophone populations from the DRC. The grand sale of formerly colonial land in Masisi that Bucyalimwe-Mararo (1990 and 2001) thematises in the context of ethnic violence is also an important theme to this thesis as several land tenure conflict types draw numerous roots to these land sales (see also the results discussions in Subchapters 7.1.3, 7.2.3 and 7.2.6).

Whereas the economic and political power dimensions of rural land relations such as those discussed in the previous paragraphs are well known to local scholars, Western academics have for the most part tended to underestimate their significance. However, there are exceptions: Willame (1997) has at a very early stage pointed to the relevance of land tenure competitions as key factor in the deteriorating inter-communal relations of the early and mid 1990s that were, by Willame's (1997) measures, to play a central role in the outbreak of the AFDL war of 1996.

Similarly, Vlassenroot and Huggins (2005) and Huggins (2010) emphasize the role of land tenure in their regional conflict analyses. The authors point to a list of documented colonial and postcolonial conflict events and show us that neither conflict for land nor communal violence are exclusively recent phenomena. However, the authors also point out that conflict around both land tenure and ethno-tribal identities concurrently escalated and eventually reached their height in the decades preceding and during the Congo wars and their political aftermaths. More importantly, in reference to examples of conflict events in North Kivu's eastern territories and the adjacent province of Ituri to the north, the authors reveal interrelations between conflicts over land tenure and various forms of ethnic conflict and show how the two tend to interact and contribute to one another where land use patterns, customary land tenure systems and state laws reflect ethnic biases.

The authors' decades-spanning analysis serves well to portray some of the cultural, legal and policy frames in which conflict in eastern DRC has unfolded and it allows to readily distil conflict-driving elements from the latter. Thereby, the authors fill numerous missing links in the regional conflict analysis. Unfortunately however, little has been published to follow up.

Additional authors that deserve a brief mentioning for their influence on this thesis are Scott (2008), Stearns (2012 and 2013), Vansina (1990, 2001 and 2004) and Chretien (2006).

Scott (2008) and Stearns (2012 and 2013) analyse the conflicts of North Kivu and the wider region. Whereas neither of the two authors enters into profound discussions of recent and ongoing rural grassroots events such as the land tenure conflicts as elements of larger conflict analyses, both authors provide a number of elements on the histories of some of the local customary polities that are of relevance to the thesis. This relevance lies primarily in their character as reference points for cross verifications of my own fieldwork results with local interviewees that claimed to be knowledgeable and balanced in their own interpretations of the historical trajectories of individual chiefdoms in North Kivu. Given that local histories are in wide parts fiercely contested between some of its interpreters and their audiences, it was important for the thesis to cross-verify and refer to external secondary literature reference points. Hence, the two authors are cited on various occasions where this thesis also cites its own sources on the local histories of a number of chiefdoms in North Kivu.

The works of Vansina (1990, 2001 and 2004) and Chretien (2006) also served as historical references but mostly in different contexts and with very different rationales. Whereas Scott (2008) and Stearns (2012 and 2013) principally analyse recent conflicts from political science perspectives and refer to their own historical sources on particular, context-specific elements of local and regional history in order to analyse their subjects of current and recent topicality, Vansina (1990, 2001 and 2004) and Chretien (2006) reconstruct regional, mostly pre-colonial histories in their own right, i.e. without a principal eye at recent conflicts. Both authors are widely deemed academic authorities with regards to the pre-colonial histories of Great Lakes Africa and they are mostly cited by this thesis wherever regional pre-colonial historical contextualisation is deemed helpful to an understanding of the conflict-related problematic of the present.

The literature discussed in this section 3.2.1.6 contains numerous works that have been highly influential to the development of this thesis. Nevertheless, this section has also highlighted that the rural grassroots level of land tenure conflict remains underexplored by the so-called white literature. This lack of documented knowledge constituted a fundamental motivation for me to perform my own fieldwork and write this thesis. But in an attempt to acquire additional knowledge outside of my own fieldwork, it appeared expedient that non-

conventional, so-called *grey literature* sources be explored as additional sources. These will be discussed in the following section 3.2.1.7.

### **3.2.1.7 Unconventional plugs to academic gaps: Geopolitics and the *grey literature***

We have noted that the macro-level of regional conflict in and around North Kivu has been analyzed from various angles. Even so, though frequent links are drawn, astonishingly little has been published on the underlying conflict patterns at the rural grassroots level. This is not to say that no relevant literature exists. Numerous purpose-specific studies (Mastaki, 2005; Crawford and Bernstein, 2008; Kujirakwinja and Matunguru, 2009; Kasisi and Brown, 2009) have analyzed particular aspects of land disputes in rural Kivu, but very little has been published on patterns of rural tenure conflict at large. Similarly limited is any scholarly coverage of links and interrelations between conflict at the grassroots level and the more blatant conflicts at the middle and upper levels of political society.

In the absence of a sufficient volume of formal academic publication on the rural grassroots base, our analysis makes use of a diverse set of unconventional sources. Indeed, our research has used several sources of *grey literature*; the most important of which were unpublished or non-peer-reviewed studies, field reports and accounts of land tenure and communal conflict by private (non-academic, university student and NGO) authors, informal accounts by directly involved stakeholder groups, reports, listings and other documentation by UN and governmental sources, as well as internal papers on demographic statistics from North Kivu's rural sub-entity administrations<sup>92</sup>. The following paragraphs provide a brief overview of relevant kinds and individual works of *grey* and non-scholarly literature.

In mirroring the contentious contemporary narratives of the political world, discussions on land and identity-centered conflicts can reflect highly polarized positions. In the political environment of North Kivu, such discussions often reflect claims to local, regional or national

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<sup>92</sup> In this context it appears expedient to note that no authoritative, official or census-based statistic data on North Kivu's populations exists at the sub-provincial levels. Even the available provincial-level statistics are based on small-sample surveys and almost forty years-old census data (PNUD, 2009; DRC, 2014). This thesis makes use of demographic and ethno-demographic statistics at three different sub-provincial levels (territories, communes and *groupements*). This data is based on estimations by the rural administrations and it should be regarded with caution. Please see study area Chapter 6 for more details on the province's demographics and the estimation methods used.

autochthony and to autochthony-derived rights to land, other property, ethno-tribal or national territory, or citizenship status. At times, such claims are based on very weakly documented one-sided interpretations of historical events. Far from rejecting such one-sided points of view, analysis in critical geopolitics explicitly takes into account the polemic discourse of conflict (Foucher, 1988; Gonon and Lasserre, 2001; Mamadouh and Dijkink, 2006; Lasserre and Gonon, 2008). This may include personal observations, informal analyses, authors' interpretative accounts, political manifestos and outright propaganda. Foucher (1988) writes that critical geopolitical analysis includes true and false historical discourses, as these tend to serve as the bases for legitimization of political positions.

Nowhere is this finding more relevant than in the discursively charged environments of North Kivu where political stakeholders use competing narratives of ethno-tribal, national and regional histories to justify their conflicting political claims. It is important to note that each of these narratives is part of the way that people perceive their world. And as such, each of these narratives is likely to represent a part of the explanation for its authors' (and his audiences') political choices and actions. Competing narratives, whether false or true, are therefore part of a society's political reality. And as such, it is important for the geopolitical researcher to portray these narratives, to contextualise them with as much relevant detail as possible, and to contrast and compare the narratives, whether they are in written or in oral form.



## **4 Research Problematic, Premises, Research Questions, Hypothesis and Sub-Hypotheses**

Within the past two-and-a-half decades, the DRC has experienced two sequential wars, two local-to- regional rebellions and a series of major rural conflict events that have immersed the entire region into large-scale violence, human suffering and social and economic devastation. Given the scale of the events, it is not surprising that a strong showing of popular and scholarly literature deals with conflict and civil warfare in the DRC. However, I am convinced that much of the existing work neglects the prominence of an underlying conflict nexus that continually feeds the more visible conflicts at the surface. This nexus involves badly managed competition, dispute and conflict over the land base (see also Pottek et al., 2016). Most of all, this nexus requires further investigation, as it is not well known.

Although several more or less recent studies (Willame, 1997; Bucyalimwe Mararo, 2001; Tull, 2005; Vlassenroot and Huggins, 2005; Pottek, 2007; Mastaki and Vake, 2009 and Sylla, 2011 and Huggins, 2010) have examined the rural hearths of conflict in eastern DRC and concluded that rural competitions for farmland and related struggles over land tenure and land tenure systems are fuelling larger, regional conflicts from below, little has been published on either the tenure conflicts themselves or on the reciprocational dynamics between the various levels of conflict. By consequence, this thesis attempts to shed some light on the grassroots level conflicts as well as on their interlinkages with the more visible communal, civil and interstate conflicts at the surface.

### **4.1 Premises**

North Kivu's territories of Masisi, Rutshuru, Nyiragongo and the eastern regions of Walikale have constituted epicentres and conflict hotspots for the African Great Lakes regions' two most devastating wars (the so-called AFDL and RCD wars of 1996 to 1997 and 1998 to 2003). The same territories have also constituted epicentres and conflict hotspots for two other relatively recent rebellions that professedly aimed to overthrow the central government in Kinshasa (the CNDP and M23 rebellions of 2004 to 2009 and 2012 to 2013) as

well as for at least two events of major communal warfare (the so-called Kanyarwanda and Masisi wars of 1963 to 1966 and 1992 to 1993)<sup>93</sup>.

Somewhat less well known is the fact that these regions have also constituted hotspots for violent conflict over land tenure for several decades. Some of the root causes of violent conflict lie in physical constraint factors that comprise environmental degradation, very uneven land distribution, high and rapidly increasing population densities, a resultantly small and rapidly declining natural resource base per capita combined with a dependence on subsistence agriculture for family sustenance and resulting poverty. These factors of physical constraint are not directly linked to violent conflict, but they drive intense competitions for the land base.

Therefore, our analysis takes population pressure, uneven land distribution, environmental degradation, relative resource scarcity and resultantly intense resource competitions as exogenous givens, i.e. as systematic factors upon which public policy has little immediate impact. By consequence, whereas our analysis is concerned with the constraint factors that underlie intense resource competitions, the main interest of the thesis lies on the socio-cultural, legal, political, historical and geographical factors that connect the resource competitions to resource conflicts, conflicts over social identity and space and higher-level political conflicts.

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<sup>93</sup> See e.g. Willame (1997) and Bucyalimwe Mararo (2013) on the so-called wars of Kanyarwanda of 1963 to 1966 and GEAD (1993), Willame (1997), Tull (2005) and Prunier (2008) on the so-called wars of Masisi of 1992 to 1993.

## 4.2 Research Questions

**Research Question #1:** How prominent is land tenure conflict in North Kivu<sup>94</sup>, what are the main types and their root causes, and how are the customary and state institutions involved?

**Research Question #2:** How are the tenure conflicts of North Kivu linked to the Congo's successive land tenure systems and how does this land tenure nexus relate to the regional geopolitics of past and present conflicts over land, social identity and territorial control?

## 4.3 Main Thesis Hypothesis:

**Land is the most important asset to the majority of North Kivu's populations and it is at the center of intense competitions, disputes and conflicts over socio-economic security, social identities and economic wealth. The Congo's successive central states have not applied, or even designed their land tenure systems to manage these competitions, disputes and conflicts, but rather as a political tool to selectively extend their rule into the rural countryside. This has spawned and aggravated quasi-permanent tensions and recurring and widespread conflicts over land tenure and social identities; and particularly in the four southern territories of North Kivu it has contributed to the nurturing of intense and longstanding geopolitical tensions that have erupted on several occasions in recent history as communal, civil and interstate wars.**

## 4.4 Thesis Structure

The thesis poses two research questions on conflict over land tenure. The first question focuses on the actual land tenure conflicts from a close-up view: It requires to look at individual conflicts, to compare these and to distill common patterns in order to identify conflict types, root causes, the main stakeholders and their roles, interests and interrelations. The responses to the first research question are provided by the first four sub-hypotheses and

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<sup>94</sup> For the purposes of this thesis the "prominence" of land tenure reflects household involvement and exposure rates.

their verification processes. The discussion of these sub-hypotheses is entirely contained in the first hypothesis discussion Subchapter 7.1.

The second research question requires situating the tenure conflicts within larger institutional, political, historical and regional contexts, and the question therefore requires more of a bird's-eye view. Responses to the second research question are provided by the fifth sub-hypothesis and its verification process. The discussion of the fifth sub-hypothesis is entirely contained in the second discussion Subchapter 7.2.

## **4.5 Sub-Hypotheses and their Verification**

**Sub-hypothesis 1: Land constitutes the most valuable economic asset to the majority of rural residents in North Kivu and it also represents one of the most valuable social assets, as it represents a key source of social identity. This makes land the most critical single asset in North Kivu and land rights one of the most politically sensitive items of Congolese law.**

The verification of the first sub-hypothesis rests on a cross-comparison of firstly, the results from a documentary research of literature on human – land relations in rural North Kivu, secondly, results from an analysis of interviews held in the field with customary client farmers, smallholders and customary authorities and thirdly and most importantly, the results from qualitative and basic quantitative analyses of the responses to questions 5, 18 and 42 of the questionnaire #1 survey. The above-cited survey questions inquire on the way that respondents view their own economic and social relations to the land.

**Sub-hypothesis 2: Disputes and conflicts over land tenure are quasi-ubiquitous in North Kivu, they are present in most villages, and they affect the majority of the rural populations either as directly involved actors or as victims of insecurity and violence.**

The verification of the second sub-hypothesis is based on a cross-comparison of firstly, the results from a documentary research on land tenure conflict frequency in North Kivu, secondly and most importantly, the results from qualitative and basic quantitative analyses of the responses to questions 13, 21, 31, and 32 of the questionnaire #1 survey and questions 15,

26, 32 and 33 of the questionnaire #2 survey<sup>95</sup> and thirdly, the results from an analysis of interviews held in the field with customary client farmers and smallholders, customary authorities, landholders and land tenure conflict mediators on the prevalence of land tenure conflict in the rural areas of North Kivu.

**Sub-hypothesis 3: There are several distinct tenure conflict types in North Kivu, most of which relate to intense competitions in the land markets on the one side and bureaucratic failures oftentimes paired with bad faith on the other. Several conflict types also relate to conflicting (normative) socio-cultural and legal definitions of land ownership and related ambiguities in the land tenure system. The most violent and propagation-prone tenure conflict types link to historically grown patterns of land and social identity-related inter-communal conflict.**

The verification for the third sub-hypothesis relies on qualitative and basic quantitative analyses of the responses to questions #21 and 24 of questionnaire survey #1, as well as on interviews and document analysis. These survey questions inquire on experiences of land scarcity, land tenure dispute and conflict, the types of dispute and conflict experience, as well as on therein-involved factors. The second and most important level of the verification process is founded on interviews held with small farmers, customary authorities, medium and large landholders, land tenure conflict mediators and professionals in the land sector of the DRC's formal and customary land administrations on the frequencies and types of land tenure conflict occurrence and therein-involved factors.

**Sub-hypothesis 4: The quasi-ubiquity of land tenure conflicts in North Kivu is, on a first level, a testimony to the land tenure system's failure to manage and mitigate competition, dispute and conflict over land. On a second level, it is also a testimony to the Congolese state's lack of effective rule, direct territorial control and empirical statehood in the country's rural periphery.**

The verification of the fourth sub-hypothesis is based firstly, on a comparison of the conclusions drawn in the previous three hypothesis verifications, which highlight the

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<sup>95</sup> Copies of the two questionnaire surveys are attached in Appendices D and E of the thesis.

prevalence of tenure conflict in North Kivu as well as salient factors in the eruption, escalation and propagation processes. These conclusions will be compared to existing literature on tenure conflict and the central state's role therein. The second and most important element of the verification process comprises qualitative and basic quantitative analyses of the responses given to questions #23, 28, 29, 32 and 37 and 41 of the questionnaire #1 survey. All of these questions inquire more or less directly on the roles of customary and central state institutions in managing, mitigating and mediating competition, dispute and conflict in North Kivu's land markets. In a third step, the questionnaire results will be compared to results from my interviews held in the field with stakeholders in the competitions for land including peasant farmers and smallholders, large landholders, customary authorities, conflict mediators and legal and administrative personnel. And finally, the results from the fieldwork will be briefly compared to the existing literature on the topic.

**Sub-hypothesis 5: The Congo's (historical and current) land tenure systems' primary purpose and design is not so much to manage resource competitions and settle disputes and conflicts but rather to serve a logic of territorial control. This has spawned and aggravated quasi-permanent tensions and recurring and widespread conflicts over land tenure and social identities; and particularly in the four southern territories of North Kivu it has contributed to the nurturing of intense and longstanding geopolitical tensions that have erupted on several occasions in recent history as communal, civil and interstate wars.**

The verification of this last sub-hypothesis comprises an analysis of the socio-cultural, institutional and political environments that constitute the substrate for the conflicts over land tenure and social identities of the recent decades as well as of the historical events that have led to the latter. In methodological terms, the verification is based on a cross-analysis of the existing literature with fieldwork results mainly from interview work and secondarily also from in situ documentary analysis, the questionnaire survey and non-participant observation. Table II in Subchapter 5.4 provides a list of the interviewees.

## **5 Research Methods: A Mixed Methods Approach**

As briefly highlighted in the discussion on the thesis' disciplinary nature in Subchapter 3.1, the literature discussion in Subchapter 3.2 and the discussion of the hypothesis and sub-hypotheses verification in Subchapter 4.5, this thesis adopts more than one research method via a mixed methods research (MMR) approach. The motivation for this choice lies firstly, in the nature of the research field: As suggested in the above subchapter discussions (and also highlighted by geopolitical scholars such as Dodds (2001 and 2007) and Batson (2008), critical geopolitical analysis frequently adopts numerous focal lengths. Furthermore, different focal lengths of political analysis tend to produce different types of data that, in turn, are likely to require different methods of data analysis.

It was emphasized throughout much of this thesis that an understanding of land tenure conflicts and their interlinkage with higher level communal, civil and interstate conflicts requires different vantage points from the lowest, most close-up grassroots level viewpoint that observes tenure conflicts and the stakes at play at the individual household level to the bird's-eye view that observes the stakes at play in past and present communal, civil and interstate conflicts. I have decided to apply multiple different methods to meet the different requirements of analyzing the very diverse but nevertheless very related spheres of land tenure, communal, civil and interstate conflicts.

In applying multiple methods, this thesis finds itself in the good company of a growing number of social science scholars that regard the quantitative-qualitative controversy as an artificial dichotomy or a "distraction" (see e.g. Vogt, 2008, p. 18). Indeed, this thesis would follow authors such as Maxcy (2003), Vogt (2008) and Teddlie and Tashakkori (2009) that encourage social and behavioural scientists to harvest, process, cross-verify and triangulate all types of available data in a particular research setting in order to acquire a holistic picture of the analysed problematic. The following subchapters will explain this thesis' integration of different data types via a mixing of documentary, quantitative, qualitative and observational research methods.

## 5.1 Documentary Research

A significant portion of the documentary research was concerned with the analysis of existing academic literature and institutional documentation on the history of the DRC, its immediate neighbors to the east and their colonial and postcolonial predecessor states. Within these larger regional and historical contexts, a special focus was directed to the communal, civil and interstate conflicts that have affected today's province of North Kivu and its immediate regional neighbors throughout the post-colonial era until today. The established academic white literature has served as a foundation for all further-going research, and it is presented and discussed in some detail in the conceptual discussion in Chapter 2, the literature discussion in Chapter 3 and the hypothesis discussion in Chapter 7.

## 5.2 Fieldwork

The thesis draws on extensive fieldwork primarily in the forms of questionnaire surveys and interview analyses and secondarily also on non-participant observation and archival and other documentary research to fill several knowledge gaps that the existing white literature leaves open. Hence, a significant portion of the original research contribution of this thesis lies in its fieldwork.

The fieldwork part of the research has served the following five key objectives: Firstly, to complete the documentary research by consulting local, in many cases grey literature sources and original documents on land tenure disputes and land tenure related conflicts in North Kivu and the wider region. Secondly, to undertake two separate but closely related questionnaire surveys on competition, dispute and conflict over land tenure with farmers in rural areas of North Kivu. Thirdly, to perform interviews with stakeholders of land tenure conflicts on their experiences and views of the conflicts and of the logics that drive them. Fourthly, to perform interviews with eyewitnesses of thesis-relevant historical events, policy-makers, decision-makers and opinion-leaders and professional observers within the political, military, academic, civil society, customary society that exert influence within the public space of North Kivu. And fifthly, to *eyewitness* and experience first hand the mediation of conflicts over land tenure and related issues.



The fieldwork for the thesis was primarily carried out in North Kivu and secondarily also in surrounding areas including South Kivu and Rwanda in three stages. The first of these stages was carried out between early January and late April 2012, the second occurred between mid January and late March 2013 and the third between mid January and late February 2014.

### **5.3 In Situ Documentary Research: Aim and Execution**

The *in situ* documentary research occupied an important position in the fieldwork as it contributed to the verification of each of the three research questions. The aim of this part was firstly, to complete the sections of the documentary research that were not achievable from the distance and secondly, to perform research on four individual case studies of land tenure conflict. The case studies are not presented in the thesis; they became part of an article on land tenure conflict instead (Pottek et al, 2016). However, insights from the case study research have also been brought into the discussion of the hypotheses (namely sub-hypotheses 3 and 5).

Some of the documentary research required a physical presence in the field. This was in part due to weaknesses in documentation and document dissemination practises in North Kivu, the DRC and the wider region<sup>96</sup>. But in some cases, it was also due to the fact that pertinent documents on tenure conflict and related issues were to be treated confidentially. By consequence, original documents relating to ongoing conflicts could sometimes be accessed and viewed only locally through stakeholders, agents and mediators of conflict; but they could rarely be copied, otherwise reproduced or viewed from afar.

Primary and secondary documentation that required active fieldwork to access comprised population and other statistical documentation from rural areas<sup>97</sup>, unpublished

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<sup>96</sup> For example, there exists very little publicly accessible documentation from governmental sources on the land tenure, communal, civil and interstate conflicts of North Kivu and the wider region. What is more, analyses and assessments of tenure disputes, events of communal conflict and other rural violence in North Kivu and the wider region by graduate students, local NGOs and government offices are rarely available on the Internet or in European or North American academic or public libraries.

<sup>97</sup> There is a striking lack of reliable data available on the DRC. Much of the demographic data for the smaller politico-administrative entities (groupements) needed to be acquired locally and then cross-verified with different sources to minimize errors. The procedures applied to arrive at the data depicted in the maps are explained in the study area Chapter 6 together with the maps and the tabular data presentations.

studies by local scholars and university students<sup>98</sup>, studies by local and international NGOs<sup>99</sup>, political manifestos and memoranda of conflict participant parties, rebel organizations, political interest groups and political parties<sup>100</sup>, first-hand original documents<sup>101</sup> on conflict negotiations from involved stakeholders, stakeholder agents and private or institutional conflict mediators, juridical documents on land-related litigations and titles, contracts, agreements and other relevant information on individual land transactions<sup>102</sup>.

## 5.4 Questionnaire Surveys in Rural Locations

### 5.4.1 Aims of the Questionnaire Surveys

Together with the interviews, the questionnaire survey constituted the fieldwork's *footing* within the rural society and the grassroots bases of land tenure conflict because it directly surveyed the rural population's connection to the land base, the experienced land shortage experiences of land tenure disputes and related conflicts, types of conflicts and other relevant elements (see the questionnaire surveys 1 and 2 in the Appendices D and E).

In the frame of the questionnaire survey, qualitative and basic quantitative methods were applied in the evaluation of questionnaire data from a total of 28 research locations in

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<sup>98</sup> For example, I have consulted and compared numerous unpublished locally conducted studies. The authors of these studies were mostly graduate students of legal studies, political science, geography and development studies at the *Université de Goma* in Goma (DRC), the *Université Libre des Pays des Grands Lacs* (from both the Butembo and Goma offices, both in North Kivu (DRC)), as well as from the *University of Rwanda* in Kigali (Rwanda). Only a few of these works are individually referenced and therefore listed in the research literature section of the thesis. But several of the students were interviewed. They are presented within broader interviewee categories in Table II of Chapter 5.

<sup>99</sup> Several non peer-reviewed and some unpublished contributions from local and international NGOs are referenced in the thesis. The works are referenced and listed in the research literature section of the research bibliography.

<sup>100</sup> A small number of political manifestos and memoranda from political parties, political pressure groups, armed militia or rebel groups are referenced in the thesis. These documents are also referenced and listed in the research literature section of the research bibliography.

<sup>101</sup> Those unpublished original documents that were firstly, not assessed as confidential and secondly, clearly titled, authored and dated are individually referenced and listed in the research bibliography. However, those unpublished original documents that were assessed as confidential and/or not clearly titled, authored and dated are referenced in descriptive terms only.

<sup>102</sup> The consulted documents comprised first-hand documents on conflict negotiations from involved stakeholders, stakeholder agents and private or institutional conflict mediators, juridical documents on land-related litigations and titles, contracts, agreements and other information on individual land transactions. Given the confidential character of these documents, the thesis references them only within descriptive categories.

North Kivu. The first level aim of the questionnaire research was to establish basic (non representative) statistics including numbers of responses to individual questions by various respondent categories, percentages, arithmetic means, and standard deviations for a series of straight-forward and simple worded in most parts binary *yes-no* questions on human-land relations, perceived land scarcity, land tenure dispute and conflict prevalence, types of tenure dispute and conflict, access to mediation and adjudication services, political preferences with regards to different existing land tenure models and views of inter-communal relations.

It was anticipated that the quantitative analysis would identify regional or ethno-tribal identity-specific trends with regards to human-land relations, types of conflict experience and political preferences for tenure systems. On a methodological note of caution, wherever such trends were established, they cannot be deemed representative of entire communities or even regional populations due to the relatively small size of the respondent cohorts.

This is partially the case because the limited scale of the survey does not allow representative conclusions. But it is also because ethno-tribally defined social identities are fluid. And this, Subchapter 7.2 will emphasize, is possibly even more the case in North Kivu than elsewhere. By consequence, ethnic identity categories must be interpreted with a proverbial grain of salt. Nevertheless, in some cases it appeared useful to undertake broad categorisations based on respondents' auto-identifications with ethnic-tribal or similar social identity-based groups. Wherever such categorisations were applied in the survey data evaluation, they are explained and justified in the relevant section of the fieldwork results discussion.

The questionnaire survey's second level aim was to identify more complex elements in the dynamics of land tenure conflict eruption, escalation and propagation via a qualitative analysis of a small number of open-ended answers to broader and more deeper-going questions on human-land relations, socio-cultural identities, inter-communal relations, society-authority relations and experiences of land tenure dispute, conflict and conflict resolution.

And on a third and final level, the questionnaire survey aimed to establish a material foundation and entry port for further and deeper-going, purely qualitative research by

interview on land tenure conflict experience and related issues with selected questionnaire respondents and people from their social environments.

## 5.4.2 Administration of the Questionnaire Survey

In an initial step, I contacted organizations that operated projects in the targeted areas. These organizations ultimately acted as survey facilitators and local gatekeepers between I and the questionnaire respondents. By and large, the organizations consisted of locally implanted agricultural cooperatives and development NGOs.

**Table I.** Local Organizations that facilitated the questionnaire survey

AAP:	<i>Aide et Action pour la Paix</i>
ACODRI:	<i>Action Communautaire pour le Développement Rural Intégré</i>
ACOGENOKI:	<i>Association Coopérative des Groupements d'Éleveurs du Nord –Kivu</i>
ANAMAD:	<i>Association Nationale des Mamans pour l'Aide aux Déshérités</i>
APREDECI:	<i>Action Paysanne pour la Reconstruction et le Développement Communautaire</i>
LOFEPACO :	<i>Ligue des Organisations des Femmes Paysannes Agricultrices du Congo</i>
SYDIP :	<i>Syndicat de Défense des Intérêts Paysans</i>

Data source : author fieldwork (2012, 2013 and 2014)

The gatekeeper organizations contacted individual farmers in selected rural locations throughout North Kivu and they assembled amongst these groups of twenty-five to thirty-five voluntary respondents that were by their own estimates *functionally conversant and literate* in the French language. In the following, an appointment for the questionnaire survey research and concomitant interview sessions was set up.

In a second step, I visited the rural locations to perform the questionnaire and interview surveys. The field trips departed mostly from the provincial capital city Goma, as well as on one occasion from the province's second largest city, Butembo. Each of the seven field trips spanned between one and nine days and covered between two and eight questionnaire locations. The survey sites were mostly visited by off-road motorcycle (on three occasions) or, wherever public transportation was available, by taxis or mini-buses (on two occasions), as well as on one occasion by private SUV vehicle and on one occasion as part of a UN convoy. During these field trips, I resided mostly in the private homes of questionnaire respondents, or in the homes or offices of research facilitators.

In all but two cases, I was accompanied by one to two trusted research aids that were familiar with the regional lingua franca Swahili and additionally with a predominant local ethnic language in order to provide translation or transcription services wherever this was required. On the two non-accompanied occasions, research aids and translators were provided by the facilitating NGO.

The questionnaire response sessions were mostly carried out in semi-public locations such as inside the facilities of the cooperatives or NGOs that had facilitated the survey, in local churches, presbyteries or town halls, as well as on a few a few occasions also in private homes.

By and large, the survey sessions filled entire mornings, afternoons or evenings, normally covering three to four hours. The research team was always present throughout the survey sessions in order to explain or provide clarifications on individual questions, to translate or transcribe answers, and to undertake further-going interviews with selected questionnaire respondents<sup>103</sup>.

Most of the questionnaire research field trips spanned several days. The extended close-up local presence associated with performing the questionnaire surveys generated occasions to interview other members of the village communities<sup>104</sup>. Hence, in all cases, the survey sessions were accompanied and followed-up by semi-structured or entirely open *ad hoc* interviews, that either followed or expanded the two to three hour survey sessions by an additional one to two hours<sup>105</sup>.

There were a few cases where gatekeeper organizations or individual survey respondents claimed monetary contributions for their participation in the process. Wherever gatekeepers had provided facilities for the conduct of the survey, a small rent was paid for the

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<sup>103</sup> Questionnaire respondents were selected for open interviews based on the elaborateness of their responses to the questionnaire questions, their ability to communicate in French, their involvement in or experience with tenure conflict or other elements of interest to the thesis and their voiced interest to participate in further-going interview sessions.

<sup>104</sup> In several cases, the occasion was used to separately interview a local representative of the customary hierarchy or other rural authority such as a mayor, local police or military leaders, and on one occasion also a member of a locally implanted rebel or militia group.

<sup>105</sup> Further-going information on the interview sessions will be provided in the methodology section on interviews that follows.

latter. In all other cases, I refused to pay remunerations. However, in all but a few cases I followed the local customs and furnished locally produced snacks and drinks such as field fruits, cheese and sorghum beer.

Two different questionnaire surveys were used. The reason for this approach lay in the fact that I had encountered obstacles in the surveying process with the more extensive and, in political terms more explicit first version of the questionnaire<sup>106</sup>.

On a few occasions, local authorities including (on four separate occasions) a customary authority representative, a mayor and a local police officer declined to provide their *permission* to perform surveys that they deemed politically contentious. Whereas on two occasions small bribes facilitated the progression of the research, on two others, the entire survey was cancelled while I was already on site. What is more, on several additional occasions where the questionnaire survey took place without major obstacles, respondents were nonetheless hesitant and left out several answers.

Before this background, it was decided early on to develop a second, less controversial questionnaire in cooperation with a representative of a locally implanted NGO that was facilitating several of my field trips. The questionnaire survey #2 was therefore devised not long after the first survey sessions had taken place in early 2012. And in the following, both questionnaire surveys were simultaneously promoted to gatekeepers of small farmer groups, but the survey #1 was promoted with priority in the southern four territories of North Kivu that were closer to my principal residence in Goma and that also constituted the primary fieldwork area of the thesis.

All in all, 580 questionnaires #1 were collected from a total of 24 rural locations distributed throughout the four southern territories Masisi, Rutshuru, Nyiragongo and Walikale including two rural areas around the city of Goma. An additional 112 questionnaires from survey #2 were collected from a total of 4 survey locations in the northern 2 territories (Beni and Lubero).

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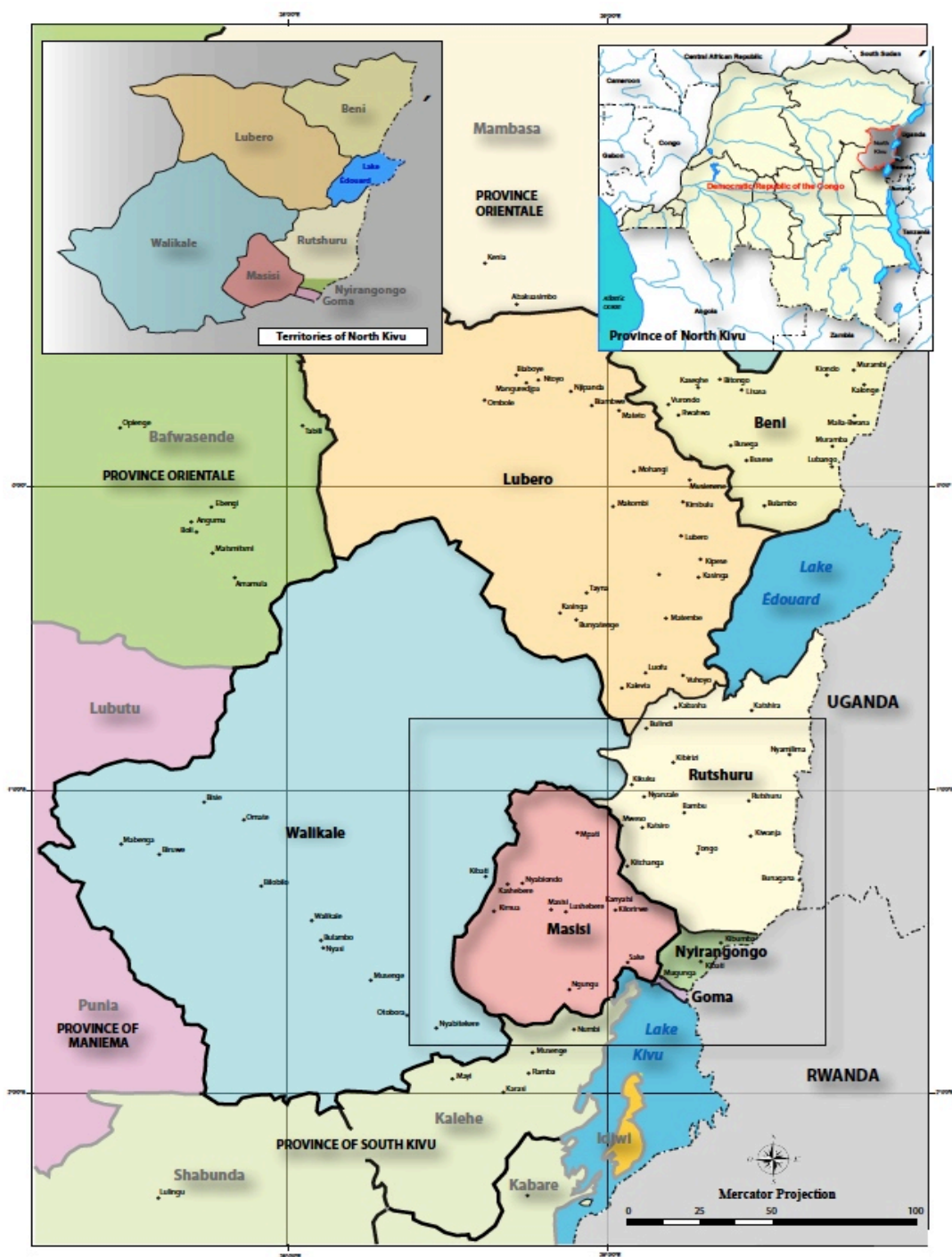
106 Copies of both questionnaire surveys are provided in the Appendices D and E of the thesis.

### **5.4.3 Geographic Overview of the Survey Locations**

The following three maps indicate and geographically situate the locations where the questionnaire surveys took place. The first map (Figure 3) provides a general overview of the area. Its lower section contains a rectangle. This rectangle indicates the approximate margins of the second map.

The second map (Figure 4) indicates the 24 questionnaire #1 survey locations within North Kivu's southern four territories Masisi, Rutshuru, Nyiragongo and Walikale. The survey locations are marked as red circles with yellow fillings wherever they are close to a small village or as red circles with black fillings wherever they are close to an urban or rural population agglomeration. In the few cases where two or more survey locations were geographically close to one another, only one point is marked on the map.

The third map (Figure 5) indicates the 4 questionnaire #2 survey locations in North Kivu's northern two territories Beni and Lubero. The research locations are indicated as green squares.



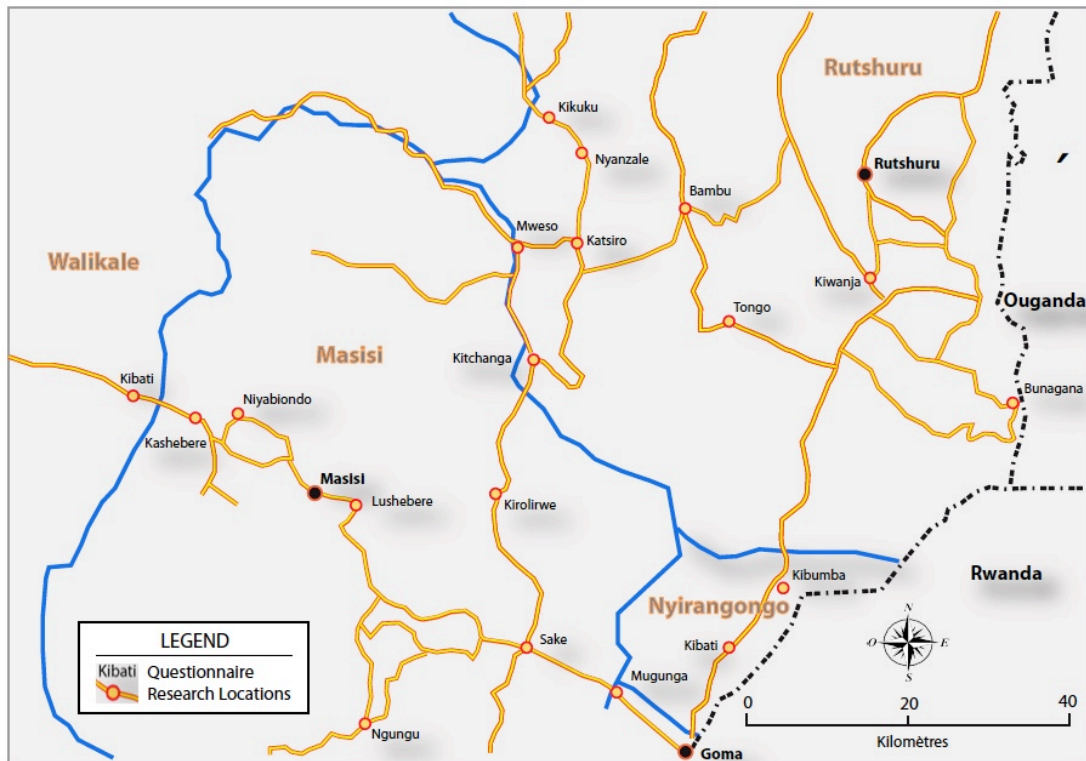
Conception: Codjia and Pottek (2016)

Data sources: UNO (2015) and Pottek (2012, 2013 and 2014)

Cartographic sources: United Nations Organisation (2015) Map No. 4412, Rev. 18, United Nations, January 2015 (Colour), Department of Field Support, Cartographic Section; <http://reliefweb.int/map/democratic-republic-congo/democratic-republic-congo-monusco-august-2015>

**Figure 3.** Geographic Contextualisation of the Fieldwork Area





Map conception: Codjia, Pottek and Hai (2015)

Data sources : UNO (2015) and Pottek (2012, 2013, 2014)

<http://reliefweb.int/map/democratic-republic-congo/rdc-province-du-nord-kivu-zones-de-provenance-des-personnes-d-plac-es>

Cartigraphic sources : UNO (2015) and Valio Mutingamo, UNOPS (2013)

**Figure 4.** Questionnaire #1 Survey Locations



Map conception: Lubunga Mutingamo and Pottek (2017)

Data sources: Lubunga Mutingamo, UN-Habitat (2017) and Pottek (2012 and 2017)

Cartographic source: Lubunga Mutingamo, UN-Habitat (2017)

**Figure 5.** Questionnaire #2 Survey Locations

#### 5.4.4 Evaluation of the Questionnaire Surveys

All of the questionnaire responses from both surveys in North Kivu were integrated into the research work. However, as pointed out in the subsection on the hypothesis verification, only certain questions were applied to the verification of the research hypotheses in a direct manner (as opposed to a more indirect verification method associated with the qualitative evaluation of the questionnaire, interview and observational elements).

All of the directly applied questions were selected based on three conditions. These are firstly, their relatively direct responsiveness to the research question that underlies the corresponding hypothesis, secondly, their applicability to a basic quantitative analysis and thirdly, the consistency in their response (i.e. that most of the questionnaire respondents from most survey locations provided responses to that particular question).

Most of the directly applied questions are binary *yes-no* type questions and all are multiple-choice questions, although several provide an additional opening for detailed explanations as a purely qualitative add-on. The following questions of questionnaire #1 were analysed quantitatively: #5, 13, 18, 21, 23, 24, 28, 29, 32, 37, 41 and 42. Of these, all but questions #5, 18 and 24 were exclusive (only one response could be given per question). The following questions of questionnaire #2 were analysed quantitatively: #15, 26, 32 and 33. All of these questions were exclusive. For the non-exclusive questions (#5, 18, 24) of the questionnaire #1 survey, the total number of responses per question oftentimes exceeded the total number of respondents in a cohort. This meant that in these cases the total number of responses per respondent cohort and not the total number of respondents constitutes the base value for the numerical evaluation.

On a final note, for most of the directly applied questions, basic statistics were established for every research location as well as for the entire cohort of each of the two questionnaire surveys. Additional statistics were established for each of three ethnic group categories on the responses to two questions of the questionnaire #1 survey (questions #28 and 29). For these questions it appeared relevant to contrast the answers between the respondents of distinct ethno-tribal communities because the questions related at least in part to culturally and historically-informed human-land relations that could be expected to affect members of different communities in different ways.

The questionnaire fieldwork has established certain trends in this regard. However, given the even smaller number of data points per data category in the ethno-tribally ordered statistics, it must be expected that there would be a very large error margin in the evaluation of this specific sub-question.

#### **5.4.5 Methodological Limits of the Questionnaire Survey**

Hence, the aim of the questionnaire survey was explicitly not to produce statistically representative values for the entire populations of North Kivu, but rather to capture numerical snapshots from a limited number of more or less randomly selected rural locations within some of the most conflict-ridden areas of North Kivu and to thereby highlight salient factors of land tenure conflicts in and around these locations. It is hoped that the numerical snapshots will point to larger trends in conflict prevalence, eruption, proliferation and propagation dynamics within the wider region, that are worthwhile to explore in more detail using larger databases and more sophisticated methods of analysis.

The questionnaire survey's dependency on facilitators, gatekeepers, French-language surveying and translators is likely to have skewed the results of the questionnaire survey not only towards a French-speaking and largely literate slice of the population, but also towards the type of clientele that the facilitating organizations dealt with, as well as towards the perceptions and interests of the involved facilitators and gatekeepers that had a say on the choice of the individual questionnaire respondents.

### **5.5 Research by Interviews**

Whereas the research work will be supported by quantitative methods from the questionnaire evaluation, its methodological core is qualitative. The qualitative research can be subdivided into four subcategories: the *in situ* documentary research described in the first part of the methodology, the qualitative evaluations of the questionnaire results that accompany the basic quantitative analysis described in the second part of the research methodology, the qualitative evaluation of the interviews and finally, the mostly non-participant observational research element associated with the field trips into the rural areas of North Kivu and the passive assistance of several land tenure conflict mediation sessions.

The research work by interview constituted a central component of the fieldwork as it generated key contributions to the verification of each of the two research questions. The interview work also contributed important elements to the development of the land tenure conflict typology presented in Subchapter 7.1.

There were three major categories of interviews: Sixty-four semi-structured one-on-one interviews, forty-eight open one-on-one interviews and eight open group interviews. Seven of the eight open group interviews were held bilingually in French and Swahili with the aid of one or more translators, whereas one open group interview with a group of university students was held exclusively in French. Thirty-six of the forty-eight open one-on-one interviews were held exclusively in French whereas nine were held bilingually in Swahili and French with the aid of a translator and two were held in English. And finally, six of the sixty-four semi-structured one-on-one interviews were held bilingually in Swahili and French with the aid of a translator whereas seven were held in English, two were held in German and forty-nine were held exclusively in French.

The choice of candidates for the interviews hinged on two main points: firstly the respondents' apparent knowledge of the research subject or one of its sub topics (either based on the candidates' involvement with the subject as participants or eye-witnesses or based on their reputation as research specialist or professional practitioner in the domain) and secondly, the respondents' readiness and availability to participate in interviews.

The interviewed individuals comprised representatives of the following groups: land administrating tribal authorities (interviewees were chosen mostly from the upper levels of tribal authority amongst those ethnic groups that played key roles in the ethnic conflicts of the 1990s and early 2000s as well as in ongoing conflicts over land tenure), specifically exposed, informal *usus* rights holding peasants and other small farmers including tenants and smallholders (from the regions affected by conflict over land tenure), large commercial landholders (from the regions affected by conflict over land tenure), land administrating state functionaries (with office authority in the region of interest), government officials (with a mandate relevant to either one or all of the regions above), opposition politicians, local and international NGOs and civil rights groups (those with an interest in land distribution, conflict

or related issues in the regions mentioned above). In each case it was attempted to interview the subject that held the highest level of formal or informal authority in his respective field.

Accordingly, the vast majority of interviewees could be classed into one of the following groups: representatives of local small farmer organizations, large landholders, customary authorities, local bureaucrats from land related government agencies, local, provincial and national politicians, representatives of political parties and political interest groups, senior military personnel, irregular combatants, staff members of various UN offices, representatives of local and international NGOs, teaching staff of universities and local and international researchers.

In many cases, the contacts to interviewees were established during the fieldwork sessions. However, the contacts to a number of interviewees had already been established well beforehand, as I had already performed extensive fieldwork in North Kivu in the years 2006 and 2007 in the frame of a Master's thesis.

The existing contacts were therefore reactivated prior to the fieldwork sessions of 2012, 2013 and 2014. In several cases where the personnel of relevant organizations had changed between the independent fieldwork sessions of the mid 2000s and those of the 2010s, the previous contacts simply relayed me to their replacements or to other colleagues. Existing contacts were then used to network and establish new contacts.

The interviewer initiated each interview with a presentation of himself, including his person, his academic affiliation and the purpose of the research. In the very most cases, the personal presentations unrolled in very informal fashions. The same applied to most of the interviews, which were, by and large, conducted in as informal ways as possible so as to instil confidence, assure confidentiality and encourage openness amongst the interviewees. Hence, in the very most cases, the interviews were conducted in a private atmosphere, i.e. either in private homes, hotel rooms, closed offices, private compartments in restaurants and bars, closed vehicles or, on a few accounts that were mostly linked to the case study interviews, in secluded sections of a field, plantation or forest.

With the same rationale it was also decided that no audio-recordings of the interviews were to be conducted<sup>107</sup>. By consequence, I took notes during the interviews, which somewhat slowed down the interview processes. In several cases the notes were entered directly into a word processing application, whereas on the many other occasions where the carry-on of larger electronic devices such as a computers was impractical due to transportation, security or other concerns, notes were taken by pen and paper.

There were four different semi-structured interview types that each posed a different set of eight to fifteen predefined main-topic *core* questions following a *tree-like* interview structure: From each of the core questions (*main branches*) related secondary questions (*secondary branches*) were developed on an *ad hoc* basis that built on the answers that the interviewee had provided to the previous set of questions. Once a topic was explored to the satisfaction of I, the latter redirected the interview and returned to the main structure (*trunk*) in order to approach the following pre-defined core question and before developing related secondary questions in an *ad hoc* manner and then repeating the pattern until all the core questions were well explored.

There was no standard interview duration; many of the semi-structured interviews filled no more than thirty or forty minutes whereas most extended to approximately one hour and some others (particularly several of the interviews that were held with political representatives, customary authorities, conflict mediators and other experts with field knowledge) reached two hours or more. Most of the open one-on-one interviews were somewhat shorter, many ranging from twenty to forty-five minutes and on a few occasions up to one and a half or two hours. All of the open group interviews spanned between one and two hours. The average duration of the semi-structured interviews was roughly one hour, that of the open one-on-one interviews between thirty and forty minutes and the open group interviews close to one-and-a-half hours.

Of the one hundred and twenty (120) interviews, sixty-six were held in North Kivu's provincial capital city Goma, twenty-six were held in rural locations of North Kivu, fifteen

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<sup>107</sup> In fact, as already in 2006 and 2007, nearly all members of the first groups of interviewees had rejected audio-recordings and as a result, the method was entirely discarded thereafter.

were held in larger regional cities including Beni, Butembo and Rutshuru in North Kivu, Bukavu in South Kivu, Gisenyi, Ruhengeri and Kigali in Rwanda and Bujumbura in Burundi, two were held in Germany (Hamburg and Berlin) and two were held in Canada (Quebec City and Montreal).

The following three tables present the semi-structured one-on-one interviews, the open one-on-one interviews and the open group interviews by interviewee category, as well as the total number (*amount*) of interviews held per category.

**Table II.** List of Interviewees

<b>Table II-a : Semi-Structured One-on-One Interviews</b>		
<b>Type</b>	<b>Description</b>	<b>Amount</b>
<b>1.1</b>	<b>Main stakeholders of Land Tenure</b>	<b><u>34</u></b>
1.1.1	Five Senior representatives of public administrations with mandates in land tenure	5
1.1.2	Four senior, three mid-level, two lower level customary land authorities	9
1.1.3	Three leading agricultural landholders, 3 medium landholders, 2 small landholders	8
1.1.4	Six representatives of small farmer associations	6
1.1.5	One Senior level legal personnel ( <i>Tribunal des grandes instances</i> )	1
1.1.6	Five Tenure conflict mediators from government and UN agencies	5
<b>1.2</b>	<b>Military and police representatives, irregular fighters and MILOBs</b>	<b><u>8</u></b>
1.2.1	Senior FARDC officers	2
1.2.2	Senior rebel group officers	1
1.2.3	Former senior representative of the UN's first mission to the DRC (MONUC)	1
1.2.4	Two military observers (MILOB) from the UN's second mission (MONUSCO)	2
1.2.5	One mid-ranked national police officer	1
1.2.6	Demobilised militia officer in CONADER's DDR program for North Kivu	1
<b>1.3</b>	<b>Public office holders and political representatives</b>	<b><u>8</u></b>
1.3.1	Two former public office holders (one PPRD and one RCD)	2
1.3.2	Two opposition party representatives	2
1.3.3	One senior representative of the electoral commission (CENI)	1
1.3.4	Three representative of political interest groups	3
<b>1.4</b>	<b>Civilian professionals and <i>experts in the field</i></b>	<b><u>14</u></b>
1.4.1	Senior representatives of UN operations offices (UN OCHA, UNHCR, UN Habitat)	4
1.4.2	University professors from North Kivu universities	3
1.4.3	One Congolese and two European political researchers with extensive local conflict research experience	3
1.4.4	Senior representatives from intl. humanitarian NGOs with operations in N-Kivu	2



1.4.5	International consultants on political and development issues with extensive fieldwork experience in N-Kivu and the wider DRC	2
<b>Total</b>	<b>Semi-structured one-on-one interviews</b>	<b>64</b>

<b>Table II-b: Open One-on-One Interviews</b>		
<b>Type</b>	<b>Description</b>	<b>Amount</b>
<b>2.1</b>	<b>Main stakeholders, agents, mediators and adjudicators of conflict over land</b>	<b>19</b>
2.1.1	Peasant farmers from questionnaire survey and other	11
2.1.3	Representatives of small-farmer organizations and coops	2
2.1.4	Representatives of the public administration	2
2.1.5	Lower-level customary authorities	2
2.1.6	Tenure conflict mediators from government, UN and private (NGO) agencies	2
<b>2.2</b>	<b>Military and police representatives, irregular fighters and MILOBs</b>	<b>9</b>
2.2.1	Lower-ranked national police officers	2
2.2.2	Lower-ranked MONUSCO field officers	2
2.2.3	Members of a locally implanted militia in eastern Masisi	2
2.2.4	Rank-and-file militia members in CONADER's DDR program	3
<b>2.3</b>	<b>Civilian professionals and experts in the field</b>	<b>14</b>
2.3.1	Representatives of the DRC's conservation agency ICCN	2
2.3.2	Representatives of the <i>Observatoire Volcanologique de Goma</i>	1
2.3.3	Representatives of the planning office in Goma ( <i>bureau du plan</i> )	1
2.3.4	Tenure conflict mediators from private (NGO) and customary agencies	2
2.3.5	Field Personnel of UN offices and NGOs that work in refugee and IDP protection	2
2.3.6	Field Personnel of UN offices and NGOs that work in environmental protection	2
2.3.7	University professors from North Kivu universities	2
2.3.8	Students from North Kivu universities	2
2.4	Other: Eyewitnesses of certain events, representatives of different organisations, other interlocutors of interest	6
<b>Total</b>	<b>Open one-on-one interviews</b>	<b>48</b>

<b>Table II-c: Open Group Interviews</b>		
<b>Type</b>	<b>Description</b>	<b>Amount</b>
3.1	Peasants from questionnaire respondent cohorts (5 to 10 respondents/ group)	7
3.2	Students of the Université de Goma (one group of 7 students)	1
<b>Total</b>	<b>Open Group Interviews</b>	<b>8</b>

Data source: author fieldwork (2012, 2013, 2014, 2016, 2017)

As highlighted in the above Table II-a, of the sixty-four semi-structured interviews, thirty-four belonged to the first (type 1.1) category, which targeted principals, agents, administrators, mediators and other stakeholders of competition, dispute and conflict over land

tenure. The questions enquired primarily on the *competition – dispute – conflict chain*, and namely on the accessibility of farmland, the socio-cultural, historical and institutional foundations of land tenure systems, their roles in managing competitions, disputes and conflicts, contrasting views of the system and the metaphysical, philosophical, socio-cultural, economic, legal-institutional and political foundations upon which contrasting views were built, types and frequencies of disputes and conflicts over land and the factors that determined or influenced the latter, the stakeholder landscape and its interrelations, interrelations between conflicts at different scales, current developments and prospects for the future.

A second category (1.2) of eight interviews targeted senior military personnel (including NSAGs), the UN stabilisation forces (MONUC and MONUSCO) representatives, and UN military observers (MILOBs). The interview questions pertained primarily to the recent history of conflict, ongoing land tenure and communal conflict in rural areas, illicit military activities, the overall security situation, the incentives for rural residents to arm and join both regular and irregular units, the design and results of the demobilisation and integration programs, effective territorial control by the central state and NSAGs, ongoing local and regional inter-communal tensions, military-central state relations, regional geopolitical tensions and international relations between the DRC and its regional neighbours.

A third category (1.3) of eight interviews targeted current and past political decision-makers, opposition politicians and a senior member of the national electoral commission. These interview sessions enquired on very much the same issues as those discussed with the military stakeholder group plus an additional set of questions on land tenure related issues (pressures on the land resource, conflicts over land tenure and resulting inter-communal tensions, ongoing tensions over unresolved pre-war issues including the political controversies around citizenship and the land tenure system), the effectiveness of the DRC's state administrations in rural North Kivu, recent and outstanding electoral processes and the political and logistic difficulties associated with the latter, upcoming political decisions and visions for the future with regards to the socio-economic and political developments of North Kivu, the wider DRC and Great Lakes Africa.

A fourth category of fourteen interviews targeted Congolese and international civilian professionals and *experts in the field* including university-employed and independent

researchers, project and program managers, field managers and consultants for UN offices and humanitarian NGOs that were involved with research work on land tenure related issues and conflict, conflict mediation, population displacements and related issues. Given the heterogeneity of this group, the lists of interview questions were similarly heterogeneous, but they by and large reflected the interview structures of one of the first three groups or a combination thereof, depending on the field of expertise of the interviewee.

The forty-eight open one-on-one interviews listed in Table II-b were subdivided into similar categories as those of the semi-structured one-on-one interviews and they followed similar, though much more flexible interrogation lines. And finally, Table II-c lists two subcategories of open group interviews. The larger subcategory comprised seven group interviews with mixed groups of five to ten subsistence and semi-subsistence farmers<sup>108</sup>, as well as one group of seven students of the *Université de Goma*. One of the interviewed farmer groups consisted entirely of female farmers whereas the other six groups were mixed male-female groups with males mostly dominating the ranks. The group interviews with the *peasant* farmers were held concomitantly with or immediately subsequent to the questionnaire sessions discussed above in this chapter. The group interview with the seven undergraduate university students (five males and two females) was held in the parental home of one of the students in Goma.

## 5.6 Cases and Observational Elements of the Fieldwork

The fourth volley of fieldwork inscribes itself into the frame of four case studies of land tenure conflicts. The case studies are not presented as such in the thesis, but many elements thereof are used in the development of the land tenure conflict typology. The case study part of the fieldwork drew primarily on archival research and interview analysis, as well as secondarily also on mostly non-participant observational research.

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<sup>108</sup> Both types of farmers, i.e. subsistence and semi-subsistence farmers are normally referred to as *peasant* farmers in both the local literature and common usage in North Kivu. This thesis follows the local example. Most farmers in North Kivu are semi-subsistence farmers whenever the circumstances allow them to produce a small surplus. During economic hardships, the farmers largely return to subsistence lifestyles.

The largest of the four cases had already represented a subject of research interest during the fieldwork towards my Master's thesis in 2006 and 2007. During this fieldwork, two four to six-day field trips had been undertaken to the conflict mediation sites and participants and mediators had been interviewed before, during and after the mediation sessions. When the actual fieldwork for the PhD dissertation was initiated in early 2012, I was already acquainted with several of the stakeholders and also some of the mediators for a very large and still ongoing tenure conflict case. These contacts were reactivated and via the reactivation new contacts were made with stakeholders and mediators of other land tenure conflicts. Within a few weeks of the first field visit in February 2012, three private (NGO-sponsored), UN (UN-Habitat) and governmental (the *bureau foncier des cas litigieux* of the land registry office in Rutshuru) land tenure conflict mediation organizations had invited me to observe tenure conflict mediation sessions and perform interviews with involved stakeholders.

The selection of each case of tenure conflict was partially determined by external parameters relating to the availability of documentary information on the case, the level of cooperation by stakeholders and conflict mediators and their availability for interviews, their fluency in the French language and the availability of trusted translators. Equally important in the selection process were case-internal parameters relating to the combined economic and political weights of the involved actors, the case's interrelation with larger conflict patterns and the case's apparent importance as factor of peace and conflict in its rural environment. A final criterion in the selection process was my assessment of the explanatory value of the available information on the case.

The execution of the case studies comprised preliminary documentary research mostly at the office location of the conflict mediation bodies. In the following steps, stakeholders that had agreed to cooperate in the research work were contacted for interviews. In the frame of the case observations, a total of fourteen semi-structured one-on-one interviews as well as seven open one-on-one interviews were held with directly involved stakeholders or their representatives, customary and state authorities that were involved as mediators, adjudicators, witnesses or negotiation facilitators, the primary conflict mediators, as well as any other person that was referred to me as important to or knowledgeable of the ongoing negotiation and mediation processes.

Eleven of the fourteen semi-structured one-on-one interviews that directly pertained to the case observations were held in French, whereas three of the interviews were held bilingually in French and Swahili with the aid of a translator. Of the seven open one-on-one interviews five were held in French and two bilingually in French and Swahili with the aid of a translator. In two of the four cases, corresponding to three of the six field trips, participants were observed and questioned during and immediately after the actual conflict mediation sessions, whereas in the two other cases the interview work was limited to participant and mediator interviews before and after the mediation sessions.

The core aspects of the fieldwork consisted of the above-described documentary, questionnaire and interview research. However, several of these research methods also comprised non-participant observational research elements. While no formal analytical grill was applied in the evaluation of the observational research results, the latter nevertheless contributed a significant portion of local knowledge to my understanding of the geographic, socio-cultural, socio-economic, political and geopolitical environments that define the lives of the rural populations in North Kivu.

The observational research comprised mostly non-participant elements. However, participatory elements were also involved: Firstly, I resided throughout the cumulative seven months of the three fieldwork sessions with Congolese nationals and residents<sup>109</sup>. This provided ample occasion to participate in the daily lives of my hosts, learn about local norms and customs and exchange views on all walks of life including local, regional and international politics.

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<sup>109</sup> Outside of the fieldtrips for the questionnaire, interview and case study research that covered roughly 35% of the cumulative seven months period fieldwork time, I resided primarily in Goma, where roughly 50% of the interviews were held and where electricity, internet, mobile telephone coverage, copy shops for printing and other amenities were more readily available than in the smaller towns and villages of North Kivu. When in Goma, I resided alternately with the family of a befriended logistics manager from South Kivu (roughly 50% of the overnight stays in Goma), the family of a befriended undergraduate student at the Université de Goma (roughly 10% of the overnight stays in Goma), a befriended large landholder (roughly 10% of the overnight stays in Goma) and the family of a befriended land surveyor (roughly 5% of the overnight stays in Goma). Of the four private host residences, public utilities (running water and electricity *from the grid*) were only available at the landholder's residence. The remaining overnight stays in Goma were to roughly equal parts spent in different private residences and different hotels.

However, roughly two thirds of the residential *daily life-sharing* aspect of the research took place in the provincial capital Goma and therefore at significant distance from the rural populations that the thesis has ventured to explore. From changing home bases in Goma a total of sixteen two to nine-day field trips were undertaken. Six of these led to the sites of the questionnaire surveys, another six to the fieldwork sites for the conflict mediation sessions and an additional four to different sites for interviews that were neither directly related to the questionnaire or the case observation work.

Whereas the questionnaire and some of the interview sites were visited with private vehicles (rented off-road motorcycles, motorcycle taxis, mini-buses, private SUVs, etc.), the field trips to the sites of the mediation sessions took place in a different context. On all of the mediation session-related fieldtrips, I joined a conflict mediation team as an invited guest. On four occasions, I accompanied team from UN Habitat's North Kivu office in Goma and on two occasions, I accompanied the chief officer of the land registry's *bureau foncier des cas litigieux* of the Rutshuru territory. The four fieldtrips with the UN Habitat teams were undertaken in the UN's own SUVs. The mediator teams travelled in small convoys of three to seven vehicles that mostly included vehicles from dUN Habitat, other UN field offices and one or two semi-armoured troop carriers. The state administration's conflict mediator travelled less conspicuously: one of the two field trips with the governmental mediator was accompanied by two (FARDC) soldier-carrying light (*pickup*) truck patrols whereas one of the field trips was not accompanied by armed personnel at all.

The daytime hours of the fieldtrips were spent *in the field*, i.e. in and around the locations in which the mediated negotiations took place. The discussion and the negotiation sessions were held in the most different places: some took place in stakeholder homes or on their yards, others took place in the private homes or offices of local customary leaders; but the majority of talks took place in *the field*, i.e. in the most literal sense of the term, namely on the disputed land. The sidelines of the mediation sessions provided plenty of opportunities to interview conflict participants or their agents, other stakeholders, the mediators themselves, customary authorities that oftentimes served as *second line mediation* institutions, technical staff such as the land surveyors that sometimes accompanied the mediation teams to put into concrete terms compromises that were expected to be negotiated in the field, second or third

level stakeholders such as neighbors of the contested lands that oftentimes had their own take on the events, as well as UN staff such as officers or rank-and-file soldiers of the MONUSCO force that were present on several occasions during the sessions to guard the events.

Despite the fact that the negotiations mostly alternated between the official language French and the vehicular Swahili, I was largely able to follow the exchanges in part due to the services of translators (these were mostly members of the mediation teams themselves)

On all field trips linked to the conflict mediation sessions, I overnighted in the same locations as the mediation teams. The locations comprised a UN Habitat field office, a mediator's personal residence, a military camp of the MONUSCO forces, a small rural hotel, a local presbytery and the private homes of customary and formal state authorities. This type of travelling implied proximity between all co-travellers. Instilling confidence and reinforcing human connections, the proximity in turn helped to establish and intensify the contacts.

## 6 The Study Area and its Role as Host of Land Tenure and Social Identity Conflicts

This chapter presents an overview of the physical and human geographies of the principle area of interest for this thesis, i.e. the province North Kivu. It commences with a general introduction of the province and its regional location, followed by rough geomorphologic, biophysical, politico-administrative, socio-economic and ethno-demographic descriptions. Most of the information contained in this chapter is derived from existing literature sources. However given the weak administration and documentation cultures of the DRC, information on demographic and other relevant elements of the research environment needed to be collected via interviews and other types of fieldwork. The aim of the chapter is to highlight salient factors of the physical, human and administrative environments within which the research problematic unfolds.

North Kivu is almost evenly divided between equatorial Africa's<sup>110</sup> two most prominent biophysical features, namely the western (Albertine Rift) portion of the East African Rift Valley and the eastern section of the Congo Basin. North Kivu's landmass is circumscribed by the 0°58' North and 2°03' southern latitude and the 27°14' and 29°58' eastern longitude with a north-south expansion of approximately 265 km and an east-west expansion of approximately 225 km. This places the province slightly east of the geographic center of the continent at a Euclidian distance of roughly 1,800 km from the Atlantic coast and 1,300 km from the coast of the Indian Ocean. Given the Euclidian distance, the region's political instability, the feeble physical security situation and the extremely weak physical infrastructures, North Kivu must be considered as a highly landlocked location. And even if its host country, i.e. the DRC, borders the Atlantic Ocean it is in terms of accessibility, transportation and economic exchange much closer to the Indian Ocean.

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<sup>110</sup> *Equatorial Africa* is not a precise or universally recognized geographic designation. In the context of this thesis, I refer to a continuous stretch of the most equator-proximal regions of continental Africa, roughly circumscribed by five to seven degrees of latitude north and south of the equator, as *equatorial Africa*. Hence, our conceptualization has little in common with the French colonial designator *Afrique équatoriale française* (AEF) that covered today's Chad, Central African Republic, the Republic of Congo and Gabon, all to the west of the DRC and mostly at much greater distances from the actual equator.



Furthermore, North Kivu is bordered clockwise by the provinces of South Kivu to the south, Maniema to the southwest, Tshopo to the northwest and Ituri to the north, as well as by the countries Uganda to the northeast and Rwanda to the southeast (Pottek, 2007).

Covering a surface area of 59.483 square kilometres, North Kivu comprises just over 2.5% of the DRC's national territory (PNUD, 2009) and it is thereby one of the country's smallest provinces by surface. The population of North Kivu is estimated at 7 million<sup>111</sup>, thereby contributing roughly 9% to the national total. As such, North Kivu is the DRC's second most populous province, next only to the national capital *city-province* Kinshasa, which is home to roughly 11.6 million inhabitants (CIA, 2017)), and with an average population density of 118 persons per square kilometer, it is also one of the DRC's densest populated provinces (DRC, 2017). Like the rest of the DRC, North Kivu has an extremely young population: both the national (CIA, 2017) and North Kivu's (DRC, 2005) median age are estimated at just over 18.4 years, with an average estimated at 20 years (PNUD, 2009). Finally, North Kivu's population is estimated to grow at around 3% annually (PNUD, 2009 and DRC, 2005; see also our extrapolations in this study area chapter).

North Kivu's capital city Goma is by far its largest city harbouring close to 0,9 million residents, and thereby half of the province's urban population. Goma is located in the very south-eastern section of the province on the shore of Lake Kivu, and it is geographically contiguous with the Rwandan city of Gisenyi. Goma is also situated at roughly 1,600 km (Euclidian) distance from the national capital Kinshasa, 100 km from the Rwandan capital Kigali, 200 km from the Burundian capital Bujumbura and 400 km from the Ugandan capital Kampala. Finally, Goma lies roughly 180 km and 230 km south of North Kivu's two other major urban centers Butembo and Beni.

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<sup>111</sup> For a more detailed discussion of population numbers and sources, see the ethno-demographic presentation of the study area Chapter 6.

## **6.1 The Biophysical Environment of North Kivu and its Relevance to Today's Population Distributions and Relative Resource Scarcity**

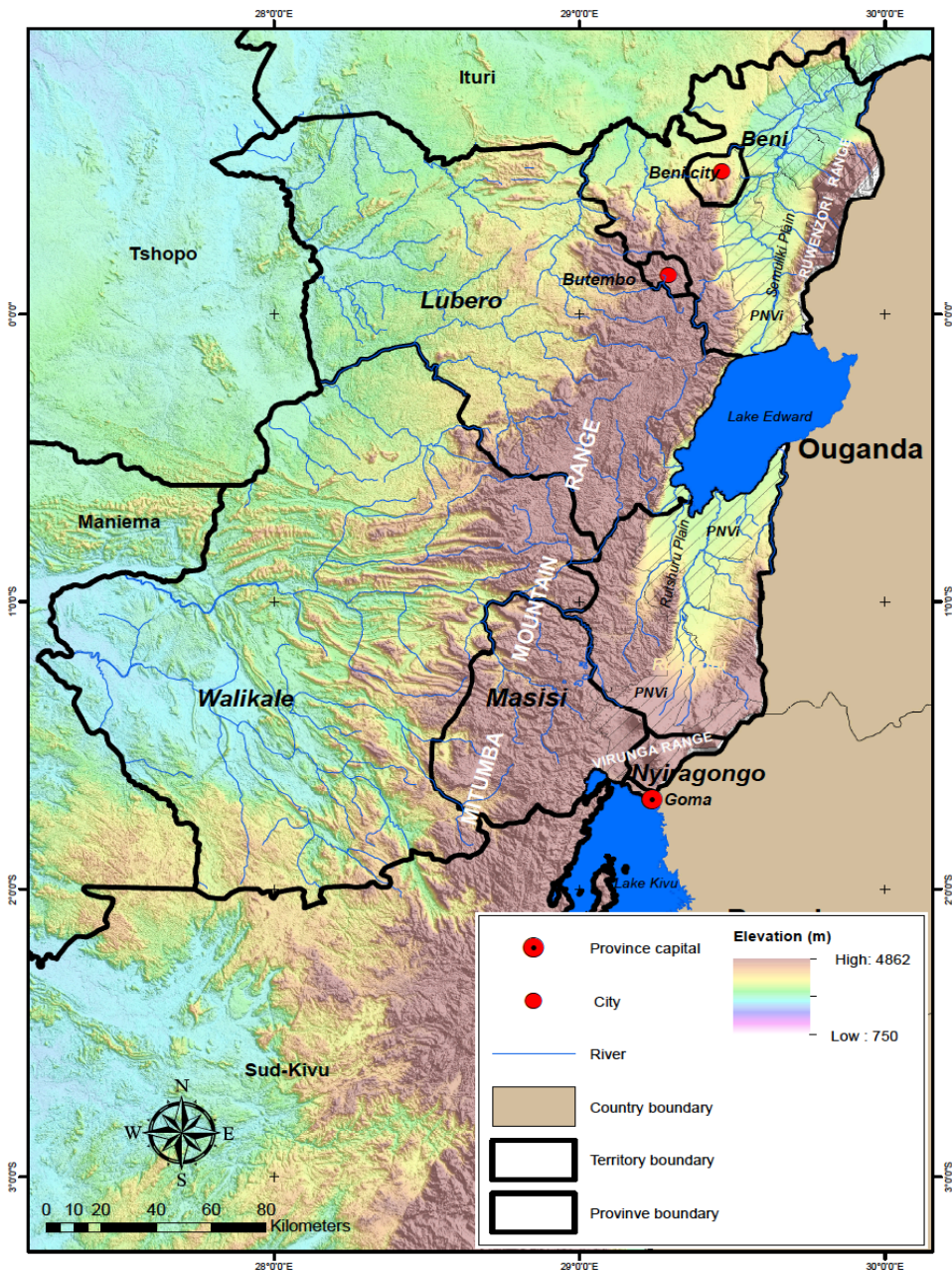
The following paragraphs provide an overview of the North Kivu's biophysical environment. This thesis is about land tenure conflict in North Kivu and about the human factors, i.e. primarily the ethno-demographics, culture, socioeconomics and politics that influence the conflicts. Nevertheless, the natural environment is an important factor in the base equation that underlies the human element. For example, by and large, the most tenure conflict affected areas of North Kivu are also its most densely populated areas. And these, in turn lie almost exclusively within a number of biophysically clearly circumscribable regions together constitute roughly half of the province's surface total, namely the Mitumba and Virunga mountains, the lakeshores and the drier sections of the alluvial plains that follow the Albertine Rift Valley in a north – south direction.

Outside of these biophysical regions, both population densities and reported events of tenure conflict represent a small fraction of what they are inside. This has historical and political reasons that I will briefly highlight in this study area chapter and discuss in some detail in Subchapter 7.2. But it also has biophysical reasons that I will briefly highlight in the coming discussion of North Kivu's biophysical environment in the following paragraphs.

North Kivu consists of three biophysical regions. These are firstly, the easternmost alluvial and lacustrine plains (namely those of the Rwindi, Rutshuru and Semliki Rivers) and water bodies (namely Lake Edward and Lake Kivu) that have partially filled the depression of the Albertine Rift Valley that runs along North Kivu's eastern borders with Uganda and Rwanda and that cover a long and narrow stretch along the eastern border representing slightly less than 10 percent of North Kivu's total surface (Beernaert, 1999 and DRC, 2005).

The second largest biophysical region of North Kivu comprises three geologically entirely distinct but geographically almost contiguous mountain ranges that are all associated with the Albertine Rift. The three mountain ranges together form the Congo-Nile watershed, they cover roughly 40 percent of the province's surface and they dominate the physical geography of North Kivu's eastern half (Wils et al, 1986). The third biophysical region

constitutes the transition zone that connects the Mitumba Mountain range to the Congo Basin. This mountain-to-basin transition area covers the remaining 50 percent of the provincial surface total and expands over the province's western half and the northernmost section (Beernaert, 1999) (see Figure 6).



Map conception: Lubunga Mutingamo and Pottek (2017)  
 Data source: Lubunga Mutingamo, UN-Habitat (2017)  
 Cartographic source: Lubunga Mutingamo, UN-Habitat (2017)  
**Figure 6.** Physical Relief of North Kivu

The provincial relief's heterogeneity (see Figure 6) translates into a broad variety of local climates. As elsewhere there is an overall correlation between temperature and elevation: average temperatures of 23° C, 19° C and 15° C are regularly measured at 1,000 m, 1,500 m and 2,000 m, respectively (DRC, 2005). Similarly varied are annual precipitation averages throughout the province. The latter lie around 1,000 mm at the lowest altitudes in the easternmost alluvial and lacustrine plains (east of the Mitumba range in the rift valley floor) and between 1,300 mm and 2,000 mm in the Virungas and eastern Mitumbas, with higher altitudes corresponding to higher precipitation rates (DRC, 2005). The annual precipitations in the highest elevations of the Ruwenzori range are estimated to surpass 2,500 mm (Beernaert, 1999). At altitudes above 3,500 m the Ruwenzoris are quasi-permanently cloud and mist-covered with minimum insolation. Above 4,500 m, much of the precipitation falls as snow. Finally, in returning to the province's western sections, the mountain-to-basin transition area west of the Mitumba range disposes of annual precipitation rates similar to those of the Congo Basin itself, namely around 2,000 mm (Beernaert, 1999).

It is worthwhile to note that outside of the westernmost areas that are associated with the Congo Basin, North Kivu's precipitation rates follow four characteristic seasonal patterns: there is one rainy season from early September to early January and a second one from early March to early July. This leaves most of January, February, July and August for the dry seasons (DRC, 2005). In the province's westernmost regions, more or less uniform and season-less Congo Basin climates prevail.

The alluvial plains of the Semliki, Rutshuru and Rwindi Rivers that define much of the province's eastern rim are characterized by highly fertile loamy to sandy fluvisols and phaeozems, that have mostly accumulated as lake and river sediments. The plains' natural vegetation comprises chiefly semi-humid bush and tree savannahs. Whereas the southern plains associated with the Rutshuru and Rwindi Rivers have long supported high population densities outside of the Virunga National Park (PNVi), significant parts of the northern plains still resemble their natural state as seasonal flooding, high pathogen prevalence (most notably *Plasmodium Falciparum* and Trypanosomiasis) and the formal settlement interdictions imposed by state authorities for the PNVi have long limited human population pressures on the area (Wils et al, 1986). However, demographic pressures and associated competitions for

farmable land have been increasing notably throughout the last three decades as both cultivators and cattle-raisers have been invading the region, leading to conflicts over land tenure with semi-nomadic hunter-gatherer and mostly sedentary tribal fishermen populations as well as with the PNVi's national park authorities (series 2.3.1 interview in Goma, 2012).

Apart from the eastern water bodies and the associated plains that all lie within the Albertine Graben, most of the province's eastern half is hilly to outright mountainous, with elevations ranging in valley locations from approximately 1,000 m in proximity of the Semliki flood plains and Lake Edward via 1,460 m at the shores of Lake Kivu to mountain peak elevations of over 4,500 m in the Virunga and over 5,000 m in the Ruwenzori chain<sup>112</sup>. Outside of the low-lying floodplains and the mountain peaks, the eastern half's land mass lies mostly between altitudes of roughly 1,400 m and 2,400 meters (Beernaert, 1999 and DRC, 2005).

There are three distinct mountain ranges in North Kivu, all of which are associated with the Albertine Rift: the Ruwenzoris, the Virungas and the Mitumbas. The Ruwenzoris represent an actively uplifting, non-volcanic mountain chain that is seated to the north-west of the Mitumbas and approximately 100 km north of the Virunga chain between Lake Edward and Lake Albert, covering parts of north-eastern Lubero and south-eastern Beni territories, as well as western Uganda, and thereby straddling the Ugandan – Congolese border.

In the lowest elevations, i.e. between roughly 1,500 and 2,500 m, the broadleaved Albertine Rift montane forests naturally cover the Ruwenzoris. Much of the terrain, however, lies well above 2,500 m. Above 2,500 m the broadleaf forests are followed by an alpine succession of mixed leaf forests and moorlands, which again are succeeded by progressively thin soils covered in *krueppel* vegetation, alpine tundra, and finally barren rock surfaces and snow fields in the highest elevations (DRC, 2005). Only the mountain chain's lowest-lying valleys and the lower, gradual slopes naturally covered by phaeozem soils and the Albertine Rift forest are suitable for agriculture and cattle herding (Wils et al. 1986 and Jacobs et al, 2015).

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<sup>112</sup> The highest mountain in North Kivu is Mont Ngaliema (formerly Mount Stanley) in the Ruwenzori chain; it is with 5,109m also the DRC's highest mountain (Jacobs et al, 2015) and it is glaciated.

Given that much of the terrain in the Ruwenzoris is very steep, the range was until fairly recently very thinly populated and mostly left to semi-nomadic hunter-gatherer populations and small sedentary communities of tribal fishermen along the tributaries of the Semliki River (DRC, 2005; Mastaki, 2005; Pottek, 2007). The situation however, is changing as demographic pressure in adjacent regions of North Kivu and Uganda, as well as conflict-related forced migrations are pushing homestead-seeking populations into the valleys of the Ruwenzoris including into those parts that are formally protected and exempt from settlement as part of the PNVi (series interview 2.1.3 Goma, 2012).

By consequence, the stable and fertile phaeozom soils in many of the lowest-lying valleys of the Ruwenzoris are now densely settled, with population numbers in several locations surpassing 350 inhabitants / km<sup>2</sup> on both the Ugandan (Jacobs et al, 2015) and the Congolese (see the discussion and cartographic presentations later in this study area section).

The population densities in parts of the lower Ruwenzoris are thereby approaching those of the Masisi, Rutshuru and Nyiragongo territories in the Mitumba and Virunga ranges. What is more, the growing population pressures in the Ruwenzoris' lowest valleys are progressively pushing land-seeking farmers to cultivate less fertile and more instable leptosols on the steeper valley slopes and at higher elevations, which exposes these populations to frequent, and sometimes disastrous landslides (Jacobs et al, 2015). Worse, the growing pressures on the land in parts of the Ruwenzori Mountains are also increasingly triggering land tenure conflicts in a region that has long served numerous Congolese and Ugandan insurgent and militia groups as rear base and rural hideout (see also Titeca and Vlassenroot, 2012).

Roughly 100 km south of the Ruwenzori Mountains and separated from the latter by Lake Edward and straddling the Congolese, Rwandan and Ugandan borders, situated squarely between Lake Edward and Lake Kivu lies the Virunga Mountain range. The latter represents a chain of eight major, in geological terms fairly young (mid to late Pleistocene) and in three prominent cases very active volcanoes. The Virungas rise in a more or less widely dispersed manner out of the overall relatively flat Albertine Rift Valley with base elevations around

1,500 m and summits between 3,000 m and 4,500 m (Beernaert, 1999)<sup>113</sup>. The chain's three active volcanoes are the Bisoke, Nyamuragira and the Nyiragongo, all of which are located within a 35-kilometer radius north and northwest of the provincial capital city Goma.

The volcanism that is still actively forming the Virunga Mountains has also generated the base material for the soils that cover the range (Beernaert, 1999). Soils stemming from the most recent eruption are in large parts still rocky and barren and unsuitable for agriculture. But the mostly basaltic material readily weathers into highly fertile volcanic topsoils (Beernaert, 1999 and DRC, 2005) such that lava fields are oftentimes swiftly resettled, and re-cultivation appears to be common within three to four decades of an eruption<sup>114</sup>.

Generated by volcanoes that rise out of the rift valley, the major lava fields of North Kivu lie in the relatively dry lower elevations of the Albertine Graben, which is naturally characterized by herbaceous plains and eucalyptus-dominated sclerophyll forests (DRC, 2005). But the Albertine Graben that runs through the Nyiragongo and eastern Rutshuru territories between Lake Edward and Lake Kivu has long supported high rural population densities. By consequence, the original sclerophyll forest landscape of the lower elevations (between roughly 1,500 and 2,000 m) has ceded its place mostly to staple crop plantations and (a much smaller number of) pastures outside the protected areas of the PNVi (DRC, 2005; Mastaki, 2005; Pottek, 2007). The higher elevations of the Virunga volcanoes (between roughly 2,000 and 2,500 m) are naturally covered in Albertine Rift montane forests that give way to bamboo and mixed-leaf forests in some of the higher elevations (Beernaert, 1999 and DRC, 2005).

But the dense settlement of the fertile lava fields in close proximity to active volcanoes exposes large numbers of people to the risks of volcanism. And as the two most recent eruptions of the Nyiragongo volcano in 1977 and in 2002 have demonstrated, the volcanic

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<sup>113</sup> The highest of the Virunga's eight principal volcanoes is the inactive Mount Karisimbi at 4,519 m (CIA, 2017), which lies directly on the Rwandan – Congolese border and roughly 30 km northeast of Goma.

<sup>114</sup> In fact, natural shrub and tree vegetation, agricultural plantations as well as new dwellings now largely cover the extensive lava fields that were formed in the course of the 1977 eruption that had destroyed thousands of residences and agricultural plots between the city of Goma and the Nyiragongo volcano. Possibly more striking is the fact that large swaths of the lava fields that were generated by the 2002 eruption are already covered in herbs, shrubs and some small trees. Some of the 2002 lava fields are now already used as substrates for banana plantations (this was confirmed by author observations and series 2.3.2 interviews in Nyiragongo territory and Goma in 2014).

menace is very real: Both eruptions have devastated parts of Goma and surrounding areas (DRC, 2005). The 1977 eruption killed several hundred people, buried important parts of the city of Goma and forced ten thousands to re-settle in makeshift settlements in the Masisi and Nyiragongo territories, spawning conflicts over land tenure with the local populations in the wake (Wils et al. 1986). Similarly, the 2002 eruption killed an estimated 150 people, destroyed the homes of over 120,000 residents, forced over 400,000 to seek temporary refuge across the border in Rwanda, triggered permanent resettlements of formerly urban residents in Nyiragongo territory and spawned renewed rounds of tenure conflict in this already conflict-ridden environment (series 2.3.2 interviews, Goma and Nyiragongo, 2012 and 2013).

At roughly 2,500 m on the Virunga's slopes the sclerophyll vegetation gives way to Albertine Rift montane forest. The montane forest elevations on all of the Virunga volcanoes lie within protected areas (namely the PNVi in the DRC, the Volcanoes National Park in Rwanda and the Mgahinga Gorilla National Park in Uganda). Five of the eight Virunga volcanoes together harbour roughly half of world's critically endangered mountain gorilla population, which puts the Virunga's squarely into the center of attention of several international nature preservation organisations

The global interest that the gorilla populations generate guarantees some level of effective protection for the montane forests and animal species on the Virunga volcanoes, but the this protection spawns controversial opinions amongst the local populations, several of which have argued along the lines of the following statement from a farmer in south-eastern Rutshuru *"the gorillas of the Virungas are much better protected and financed than we are, although their protection requires our land and not that of the whites ("bazungu")"* (series 2.1.1 interview, Rutshuru, 2012). What is more, the difficult access and the strategic cross-border location of the Virunga volcanoes at the cross-roads of the DRC, Rwanda and Uganda has also predestined them throughout the past three decades as hideouts and rear bases for regionally operating guerrilla groups. And finally, the Virunga range has also occupied a centre stage for cross-border rebel and militia activities as well as for military incursions



between the three, over the last two decades oftentimes hostile regional neighbours DRC, Rwanda and Uganda (ICG, 2012)<sup>115</sup>.

The Virunga Mountains are located adjacent and just to the east of the much older, less high-towering, but geographically much more extensive Mitumba Mountain range that runs parallel to the eastern border of the Congo (at a small lateral distance to the latter) over a north-south extension of nearly 1,000 km from the northern tip of the DRC's southernmost province Haut-Katanga to the Lendu Plateau in the Ituri province just north of North Kivu. In North Kivu, the Mitumba chain covers nearly all of Masisi, eastern Walikale, western Rutshuru, eastern Lubero, and central Beni and thereby a significant portion of the provincial land mass (Wils et al., 1986; see also Beernaert, 1999).

The Mitumba Mountains are the Albertine Rift's most extensive and oldest mountain chain that consists mostly of extinct and strongly weathered mid-Pleistocene era volcanoes (Beernaert, 1999). Slightly lower than neighbouring South Kivu's Mitumba summits<sup>116</sup>, the North Kivu section of the range disposes of base elevations between 1,200 to 1,600 m and summit elevations between 1,800 and 2,500 m, with most of the Mitumba range lying between 1,500 and 2,200 m (Beernaert, 1999). The slopes and plateaus of North Kivu's Mitumba chain dispose of thick and fertile, mostly clayey soils that constitute highly productive substrates for the semi-humid mountainous broad leaf forest vegetation of the Albertine Rift montane forest on the slopes and for semi-humid tree-savannahs on the high plateaux of Masisi.

The fertile soils, suitable climates and low Malaria prevalence of the Mitumba and Virunga ranges have for centuries attracted hunter-gatherer communities throughout their expanses, small communities of pastoralist cattle-raisers in the higher savannah plateaus and most notably, numerous sedentary agricultural communities that mostly organised within chiefdoms (*chefferies*) that came to progressively define the political landscapes of eastern (rural) North Kivu throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries (Chretien, 2006).

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<sup>115</sup> The strategic significance of the Virunga mountain range for numerous militia and rebel group activities as well as for the three adjacent states Rwanda, Uganda and the DRC is well known and it was repeatedly emphasised in my series 1.2.1, 1.2.3 and 1.2.4 interviews with MONUC and MONUSCO representatives as well as with representatives of the FARDC in 2006 and 2012.

<sup>116</sup> The Mitumba chain's highest peak at 3,308 m is that of the extinct volcano Mount Kahuzi, which is located just south of the North Kivu – South Kivu border straddling the territories of Kalehe and Kabare in South Kivu.

But the favourable environmental conditions of the Mitumbas and Virungas have also attracted comparatively high numbers of European agricultural settlers, particularly in the proximity of the navigable water bodies of Lake Kivu and Lake Edward during the first half of the 20<sup>th</sup> century (see e.g. Spitaels, 1953; Chretien, 2006). And last but not least, the two adjacent regions' favourable environments have long constituted pull factors for migrating populations from land scarcity and/ or violent conflict afflicted regions chiefly in Rwanda, but also in Uganda, Burundi and different parts of the DRC (Willame, 1997, Tull, 2005 and Lemarchand, 2009). Additional population pull factors materialised in the Mitumba range via the discovery of mineral resources such as tungsten, cassiterite, niobium, tourmaline, coltan, silver, gold and diamonds and, most notably, via the deindustrialization and *artisanalization* of the exploitation processes during and after the two Congo wars of the 1990s and early 2000s.

Whereas in the early 1930s the eastern mountain ranges were still mostly covered in their natural savannah and forest vegetation, large swathes of the latter were cleared for plantations and pastures particularly in the easternmost parts of Masisi and western Rutshuru territories in the frame of colonial agricultural commercialization projects between the late 1920s and late 1950s. A similarly powerful impact on the natural environment is associated with continuing population growth. In the nearly six decades that followed the DRC's independence, the population of North Kivu has increased more than five-fold. Whereas urban population growth in the major centers of Goma, Beni and Butembo has outstripped rural growth rates, the latter are nonetheless estimated to lie well beyond a five-fold level over a period that spans merely six decades<sup>117</sup>.

Hence, the commercialization of agriculture, natural reproduction and immigration, as well as the formal exclusion from settlement and agricultural exploitation of large swathes of land within the PNVi have over last few decades concentrated extreme demographic pressures on the Mitumba and Virunga ranges throughout Masisi, Rutshuru and Nyiragongo, as well as

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<sup>117</sup> Five to six-fold rural population increases over the last six decades can be extrapolated from a comparison of estimated late colonial period population numbers of the Kivu region, i.e. North Kivu, South Kivu and Maniema provinces (see Wauthion 1959) and more recent estimates (see DRC, 2017). A comparison of historical and contemporary World Bank (2017) data suggests comparable rural population growth rates. What is more, comparisons of colonial era data on urban populations (see e.g. Wauthion, 1959) with current data estimates (see e.g. DRC, 2017) suggest well above 10-fold increases for urban populations during the same time frame.

in eastern Lubero and the easternmost parts of Walikale. With rural population densities oftentimes exceeding 300 inhabitants / km<sup>2</sup> and no forestland left to clear outside of the PNVi, the highly fertile farmlands of the Mitumbas and Virungas have become a coveted and scarce resource (Pottek et al. 2016).

The high agricultural population densities and the population's quest for farmable soils provokes soil overexploitation, which leads to soil impoverishment over time, as well as to visible soil erosion on many of the steeper slopes of the Mitumba range. The agriculturally induced soil degradation is compounded in the most mineral-rich parts of the Mitumbas by artisanal mining practices. Tungsten, cassiterite, niobium, coltan, silver, gold and diamonds are mined by peasants in make-shift open-pit mines, that leave large swathes of former farmland soilless and barren once the minerals are mined and the miners disappear.

West of the Mitumbas, the mountain-to-basin transition land constitutes the third biophysical region of North Kivu; it covers a north-south running near-rectangle of an estimated 45 to 50 percent of the province's surface that covers the western two-thirds of Walikale, the western half of Lubero and the western half of Beni territory. The western transition region descends gradually in elevation from the bases of the Mitumbas at roughly 1,000 m towards the eastern rim of the Congo Basin that lies at around 400 m (Beernaert, 1999).

The transition zone disposes of a very warm and moist equatorial climate with very high annual precipitation rates (around 2,000 mm), annual temperature averages around 25° C and very little seasonal variation (Beernaert, 1999). Despite the in biomass and biodiversity extremely rich equatorial forest vegetation that covers this region, its soils represent very poor, strongly weathered, sandy clay-textured acidic xanthic ferralsols with important calcium and magnesium deficiencies. As such, the transition zone's soils resemble very much the strongly leached Ferralsols that cover most of the Congo Basin's interior.

Given the western ferralsols' poor chemical qualities, the land has never served as a prime agricultural destination for farmers or cattle-herders. The communities that have occupied the area were either hunter-gatherers (mostly Kango and Efe Mbute) or hunter-cultivators (Nyanga, Kano, Rega and Kusu communities), and in both cases they represented thinly dispersed populations. These settlement patterns have persisted until today: Rural

population densities well in excess of 350 habitants/ km<sup>2</sup> throughout Nyiragongo, most of Rutshuru, eastern and south-central Beni in the Mitumba and Virunga ranges contrast sharply with densities under 5 inhabitants/ km<sup>2</sup> in the western parts of Walikale and between 7 and 75 in western Lubero.

With an eye on the wide gap in population densities between the province's eastern and western sections, it is sometimes argued that excess populations should be funnelled from the Mitumba and Virunga ranges and the lakeshores and alluvial plains into Walikale and western Lubero. The topic has filled lively discussions since the mid 1980s (see e.g. Wils et al., 1986 and Nawezi et al., 1981) but they have so far met very little practical follow-up. There are multiple reasons for this, several of which I will discuss in some detail in the main discussion Chapter 7. The following section will provide an overview of North Kivu's demographic composition as well as of its administrative geography.

## 6.2 North Kivu in Ethno-Demographic and Administrative-Geographic Snapshots

Of North Kivu's 7 million population, just over five million (72 percent) live in rural areas and slightly less than 2 million (28 percent) live in eight urban centers. The urban agglomerations comprise four cities (*villes*) with a total population of roughly 1.8 million distributed more or less evenly between the provincial capital city Goma (roughly 900,000) and the three northern cities Butembo (roughly 350,000), Beni (roughly 350,000) and Oicha (roughly 150,000), as well as four towns (*cités*) that together comprise a total population of slightly over 200,000<sup>118</sup>. The cities of Beni, Butembo and Oicha are located in the so-called *grand nord* region and it appears that the Nande community represents the ethnically dominant group in all three (series 2.3.7 interviews in Beni, 2012). According to interviewed professionals (series 2.3.7 interviews in Beni, 2012) and literature sources (see e.g. Kasonia, 2013) the Nande also represent the strongest community in Goma with an estimated 50

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<sup>118</sup> There exist no official population statistics for these population centers although a survey of the urban and rural populations of North Kivu and other parts of the DRC by the *Cellule d'Analyse des Indicateurs de Développement* project is currently underway. The data is published in a piecemeal fashion on the project website <https://www.caid.cd/>. The above-cited estimations were verbally provided to me in June 2017 by a consultant that works for the project in a series 2.4 interview by telephone.

percent of the urban population total, followed by the Hutu (35 percent), the Kumu (4 percent) the Hunde (4 percent), the Tutsi (1 percent) and all remaining communities (6 percent) (Kasonia, 2013). The following table provides an estimative demographic snapshot of North Kivu from 2017. Its numbers are based on estimates from the CAID website (2017) as well as on those of the six territorial administrations of North Kivu (series 2.14 interviews, 2017).

**Table III.**North Kivu : Urban and Rural Populations

<b>Urban and Rural Populations, North Kivu</b>				
<b>City</b>	<b>Type</b>	<b>Area (Km<sup>2</sup>)</b>	<b>Population</b>	<b>Density</b>
City of Goma	Provincial Capital	76	877 586	11 593
City of Beni		184	355 160	1 930
City of Oicha		93	143 778	1 546
City of Butembo		190	344 838	1 812
Total Cities (Villes)		543	1 721 362	3 170
Total Towns (Cités)		71	214 509	3 017
Total Urban		614	1 935 871	3 152
Total Rural		58 873	5 076 546	86
<b>Total North Kivu</b>		<b>59 487</b>	<b>7 012 417</b>	<b>118</b>

Data sources: DRC (2017), author fieldwork (2017)

The spatial distribution of North Kivu's populations is approximately as follows:

**The territory of Beni** has an estimated population of slightly more than 1,3 million and a surface area of slightly less than 7,500 km<sup>2</sup> of which almost 40 percent are located in the Virunga National Park. The territory's ethno-demographic composition is estimated as follows<sup>119</sup>: the Nande make up roughly 36 percent of the population total, the Mboba are

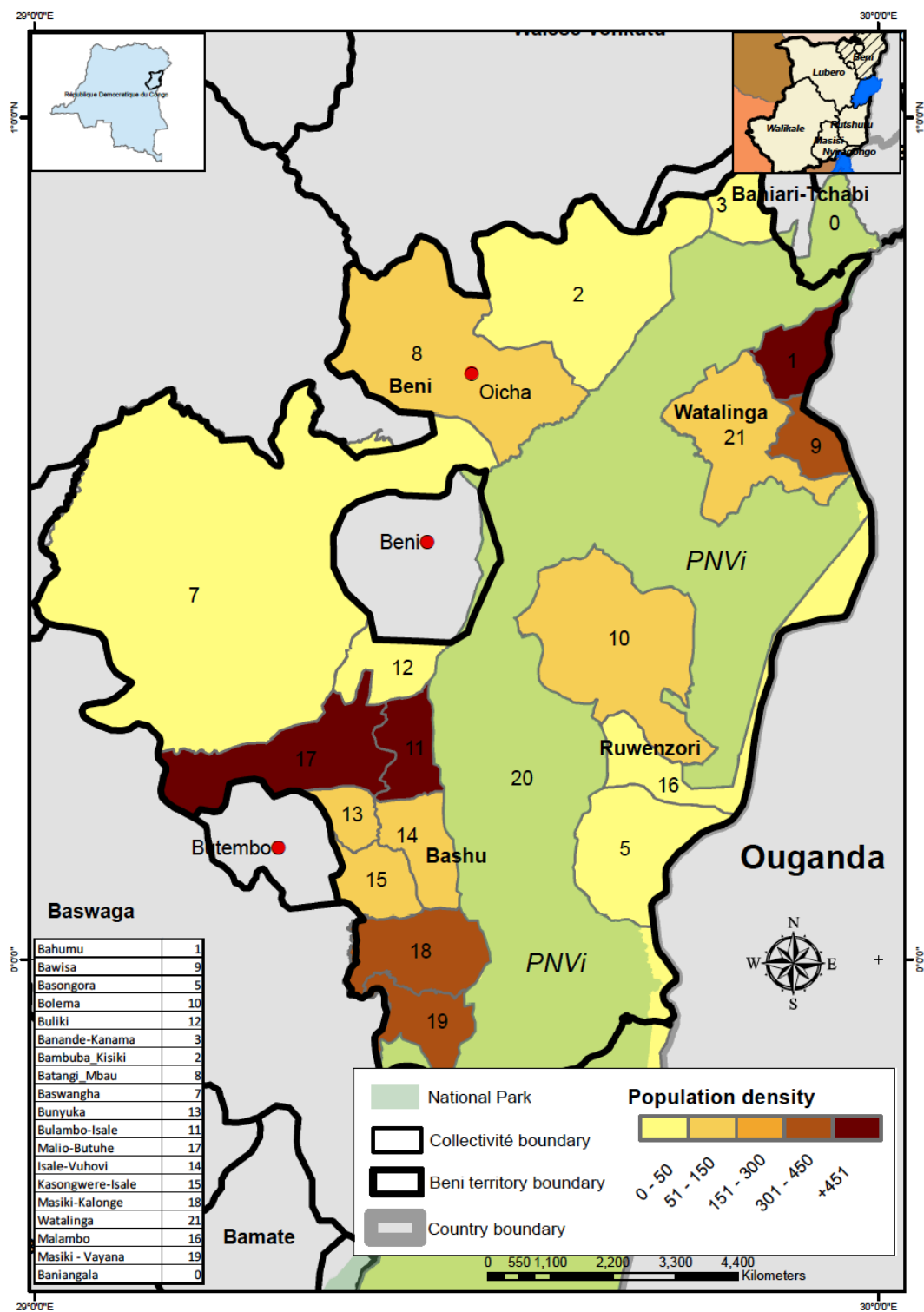
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<sup>119</sup> The ethnic classifications and the corresponding ethno-demographically organised population statistics that this thesis is citing in this section have their origins in the reports of the groupements and the collectivités to the territorial administrations. As highlighted above, ethnic identities are not fixed in stone; they are dynamic and oftentimes contested and hence, the classification of ethnic and ethno-tribal groups in North Kivu is far from consensual. Any reporting of population data that is broken down by ethnic classifications must therefore be interpreted before this background. Nevertheless, with this caveat in mind, it appears useful for the purposes of this thesis to refer to this ethnic data because it provides an approximate idea of the types and numbers of communities that live together in a given space. Neither the classifications nor the cited numbers can be regarded as absolute.

estimated at 20 percent, the Watalinga at 15 percent and the Babila at 11 percent, the Bakombe at 8 percent, the Balese at 6 percent and Mbutu communities at 4 percent. Of Beni's population roughly 38 percent live in urban areas, i.e. the two cities of Beni and Oicha and 62 percent live in the four rural collectivités. Of the latter, two are sectors (Beni Mbau and Ruwenzori) and two are chefferies, one of which (Bashu) is headed by a Nande mwami and the other by a Talinga mwami (Watalinga). There are a total of 19 groupements of which 17 are headed by Nande chiefs and two by Talinga chiefs. The Nande have a contiguous settlement range that extends across most of Beni, Lubero, northern Masisi and Rutshuru, southern Ituri and the Kasese, Bundibugyo, Kabarole, Ntoroko, Kamwenge and Rubirizi districts of Uganda's Western Region. The following map (Figure 7) provides an estimative demographic snapshot of the Beni territory from 2017. Its numbers are based on estimates from the CAID website (2017) as well as on those of the six territorial administrations of North Kivu (see series 2.14 interviews, 2017) <sup>120</sup>.

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<sup>120</sup> Please see the underlying population tables as well as a detailed description of the methodology of their assembly in Appendix C.



Map conception: Lubunga Mutingamo and Pottek (2017)

Data sources: DRC (2017), author fieldwork (2017)

Cartographic sources: Valio Lubunga Mutingamo, UN-Habitat (2017)

**Figure 7.** Beni: Groupements & Population Densities

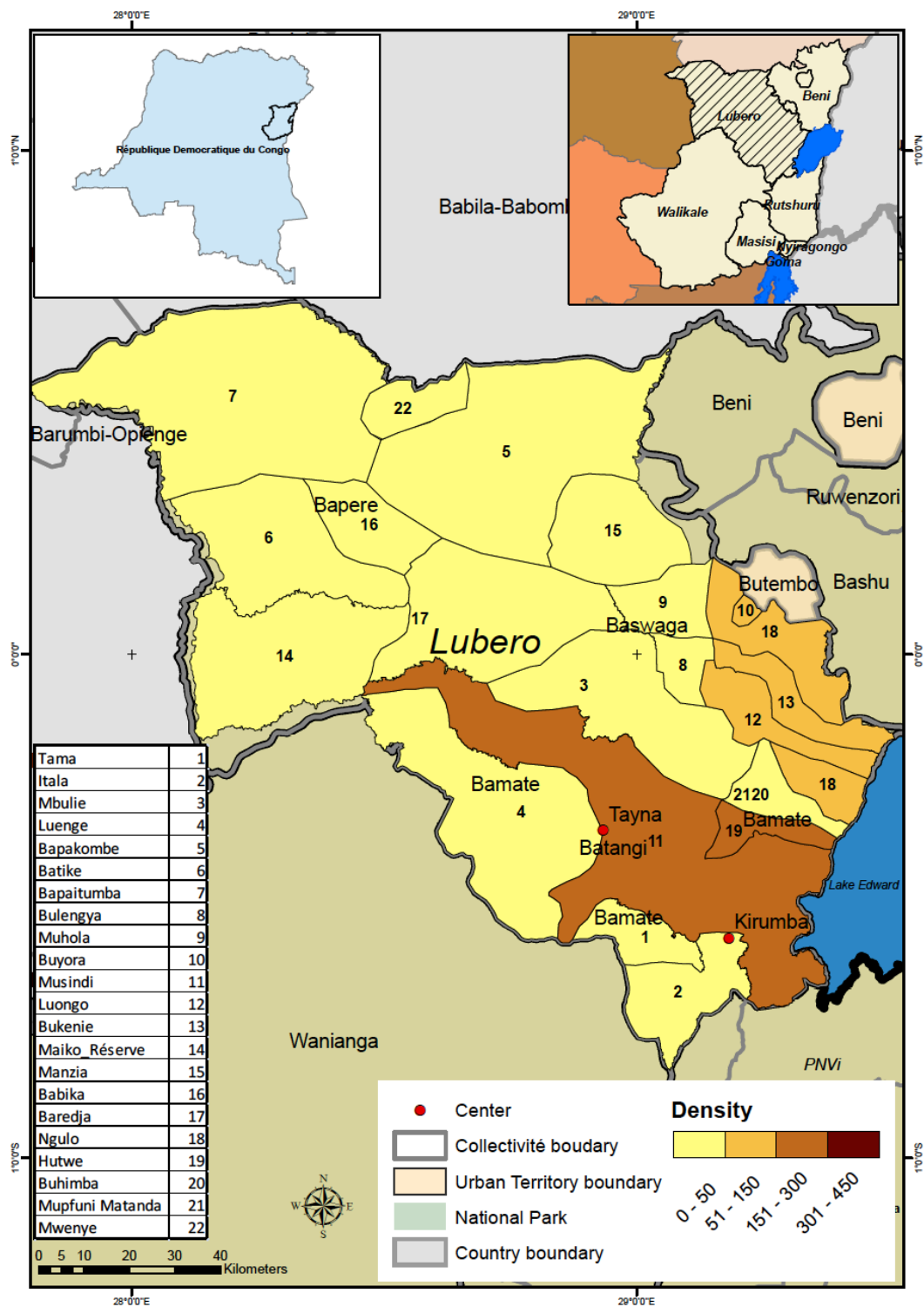
**Lubero** is (alphabetically) the second territory of the so-called *grand nord* region with an estimated population almost 1,4 million and a surface area of slightly more than 18,000 km<sup>2</sup> (DRC, 2017) of which approximately 5 percent are located in each the Virunga National Park on its eastern boundary and the Maiko National Park on its south-western boundary. The territory's ethno-demographic composition is estimated as follows: the Nande make up approximately 90 percent of the population total and the Pere, Hutu and Mbutu share most of the remaining 10 percent. Of Lubero's population total roughly 29 percent live in urban areas, i.e. in the city of Butembo (21 percent) and the three towns of Kanyabayonga, Kayna and Kirumba (8 percent).

Lubero's rural population represents 71 percent of the territory's total and is distributed over four chefferies, of which the Bamate, Baswaga and Batangi chefferies are headed by a Nande mwami and the Bapere chiefdom is headed by a Bapere mwami. There are 22 groupements of which Nande chiefs head 20 and Pere chiefs head two. As highlighted in the previous section on Beni territory, Lubero's largest community is the Nande group, which also extends over most of the Beni territory and adjacent regions in Rutshuru, Masisi, Ituri and the western-most districts of Uganda. The following map (Figure 8) provides an estimative demographic snapshot of the Lubero territory from 2017. Its numbers are based on estimates from the CAID website (2017) as well as on those of the six territorial administrations of North Kivu (see series 2.1.4 interviews, 2017)<sup>121</sup>.

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<sup>121</sup> Please see the underlying population tables as well as a detailed description of the methodology of their assembly in Appendix C.





Map conception: Lubunga Mutingamo and Pottek (2017)  
 Data sources: DRC (2017), author fieldwork (2017)  
 Cartographic source: Valio Lubunga Mutingamo, UN-Habitat (2017)  
**Figure 8.** Lubero: Groupements & Population Densities

**The so-called *petit nord*** of North Kivu consists of the province's southern four territories as well as the provincial capital city Goma. As highlighted above, Goma has roughly 900,000 inhabitants and it is located on the shores of Lake Kivu, as well as on the Rwandan border, where it is contiguous with the Rwandan city Gisenyi. The southern four territories are Masisi, Rutshuru, Walikale and Nyiragongo. Together, the four southern territories comprise roughly 57 percent of North Kivu's rural land mass and 67 percent of its rural populations.

**The territory of Masisi** comprises slightly over 4,700 km<sup>2</sup> and an entirely rural population of somewhat over 700,000 of which slightly over 10 percent are located in the Virunga National Park. According to the CAID project (DRC, 2017), the territory's ethno-demographic composition is estimated as follows: the Hutu comprise roughly 50 percent of the territorial population total, followed by the Hunde that comprise roughly 20 percent of the latter. The Tutsi and Tembo each make up roughly 10 percent of the population and the Kumu and Twa roughly 5 percent each. The population of Masisi is distributed over two sectors (Osso and Katoyi) and two chefferies (Bashali and Bahunde), both of which are headed by Hunde bami. Of Masisi's 19 groupements, 14 are headed by Hunde chiefs, whereas two are headed by Hutu chiefs, two by Tembo chiefs and one by a Kumu chief.

The Hutu, Tutsi and Twa are sometimes (though certainly not always, not by every observer and, in fact, not by many of the Twa themselves)<sup>122</sup> categorised as one and the same ethnic community, i.e. the *rwandophones*, because in parts of their distribution range they share a common language (Kinyarwanda). The *rwandophone* groups also share roughly the same large regional distribution range that comprises most of Masisi, Rutshuru and Nyiragongo as well as the western regions of Walikale, the south-easternmost sections of Lubero, northern Kalehe and parts of Uvira in South Kivu, as well as the entire neighbouring country Rwanda and parts of south-eastern Uganda and north-eastern Tanzania. The Hunde and Tembo are also linguistically and culturally related groups that some authors (see e.g. DRC, 2005) class into one and the same community. The distribution range of the Hunde and Tembo comprises all of Masisi, the western parts of Rutshuru, the eastern-most sections of

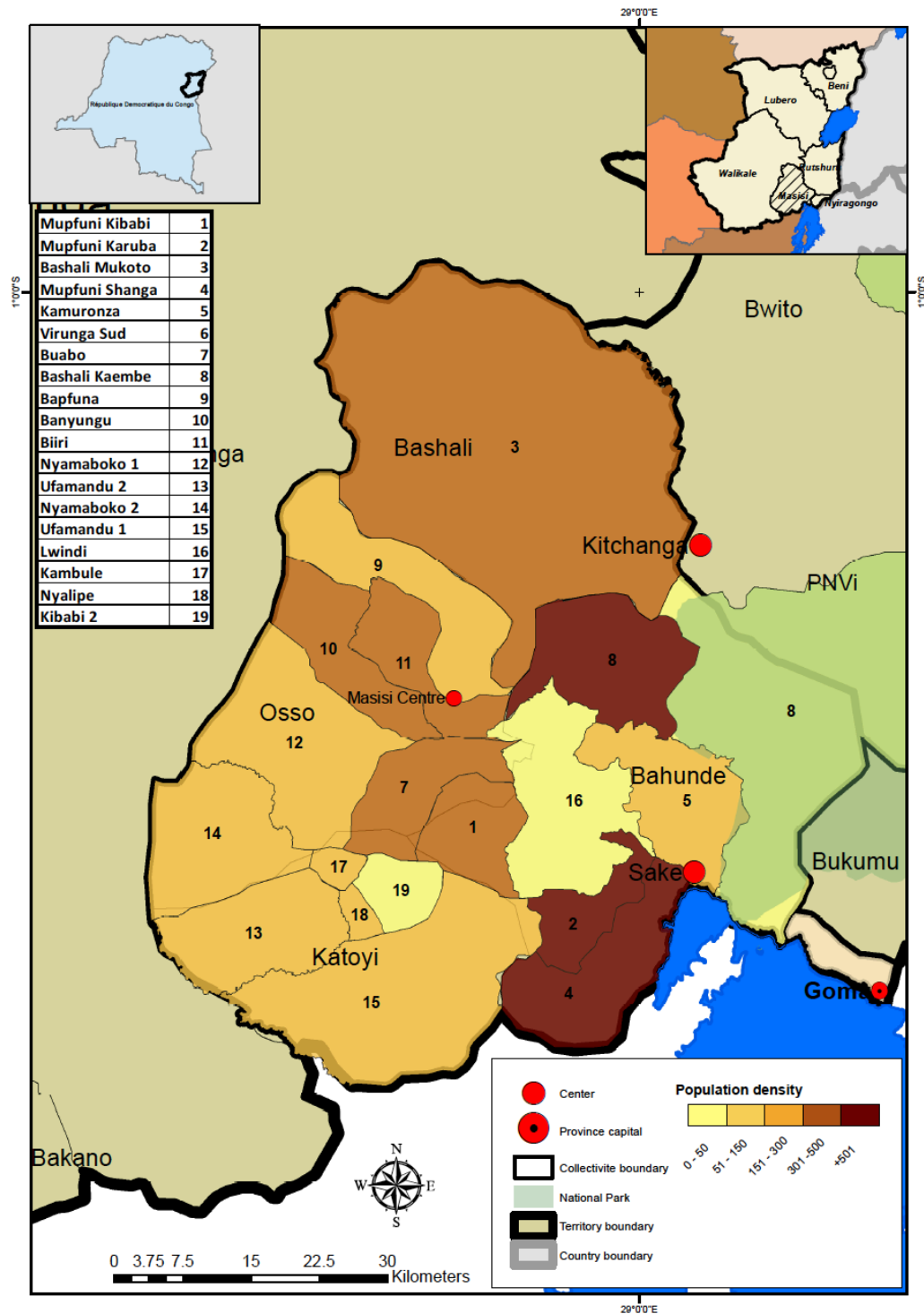
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<sup>122</sup> Please see also the discussion on socio-cultural community identities in the results discussion Chapter 7.

Walikale and the small Nyiragongo territory. Finally, the Kumu have a relatively small distribution range in the province of North Kivu comprising southeastern Masisi, southern Rutshuru and the small territory of Nyiragongo, but their regional origin is in the eastern Congo Basin in the provinces of Maniema and Tshopo where they dispose of a relatively large distribution range. The following map (Figure 9) provides an estimative demographic snapshot of the Masisi territory from 2017. Its numbers are based on estimates from the CAID website (2017) as well as on those of the six territorial administrations of North Kivu (see series 2.1.4 interviews, 2017)<sup>123</sup>.

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<sup>123</sup> Please see the underlying population tables as well as a detailed description of the methodology of their assembly in Appendix C.



Map conception: Lubunga Mutingamo and Pottek (2017)  
 Data sources: DRC (2017), author fieldwork (2017)  
 Cartographic source: Valio Lubunga Mutingamo, UN-Habitat (2017)  
**Figure 9.** Masisi: Groupements & Population Densities

**The territory of Nyiragongo** is located just to the north of the provincial capital Goma; it comprises 333 km<sup>2</sup>, of which 140 km<sup>2</sup> are located in the Virunga National Park. With nearly 150,000 inhabitants, Nyiragongo is the most densely populated rural territory of North Kivu and the DRC. According to the CAID website (DRC, 2017), an estimated 29 percent of Nyiragongo's population are Kumu and other Kikumu-speaking ethnic groups such as Hunde, Hutu, Tutsi and Twa that have adopted the Kikumu language, 60 percent are Kinyarwanda-speaking Hutu, 10 percent are Kinyarwanda-speaking Tutsi and 1 percent are Kinyarwanda-speaking Twa. Nyiragongo comprises only one chefferie (Bakumu), which is headed by a mwami of the Kumu community. Within the chefferie there are seven groupements of which two are lead by Hunde chiefs, two by Hutu chiefs, two by Tutsis and one by a Twa chief. The demographic map of Nyiragongo is integrated into the following map (Figure 10) of the adjacent Rutshuru territory.

**The territory of Rutshuru** (Figure 10) extends over slightly less than 5,300 km<sup>2</sup> of which almost half is located in the Virunga National Park. Rutshuru holds a total population of just over 1,6 million of which roughly 95 percent are rural inhabitants and 5 percent are urban residents of the town of Kiwanja. According to the CAID website (DRC, 2017), roughly 80 percent of Rutshuru's population is comprised of Hutu whereas 10 percent are Nande, 5 percent are Hunde and the remaining 5 percent are composed of mostly Tutsi and also Nyanga and Twa populations. Rutshuru has two chefferies, the western of which (Bwito) is headed by a Hunde mwami and the eastern (Bwisha) that runs along Rutshuru's eastern border with northern Rwanda and southern Uganda, is headed by a Hutu mwami. The two chefferies share a total of 14 groupements, of which 8 are presided by Hutu chiefs and 6 by Hunde chiefs. The following map (Figure 10) provides estimative demographic snapshots of the Rutshuru and Nyiragongo territories from 2017. Their numbers are based on estimates from the CAID website (2017) as well as on those of the six territorial administrations of North Kivu (series 2.1.4 interviews, 2017)<sup>124</sup>.

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<sup>124</sup> Please see the underlying population tables as well as a detailed description of the methodology of their assembly in Appendix C.



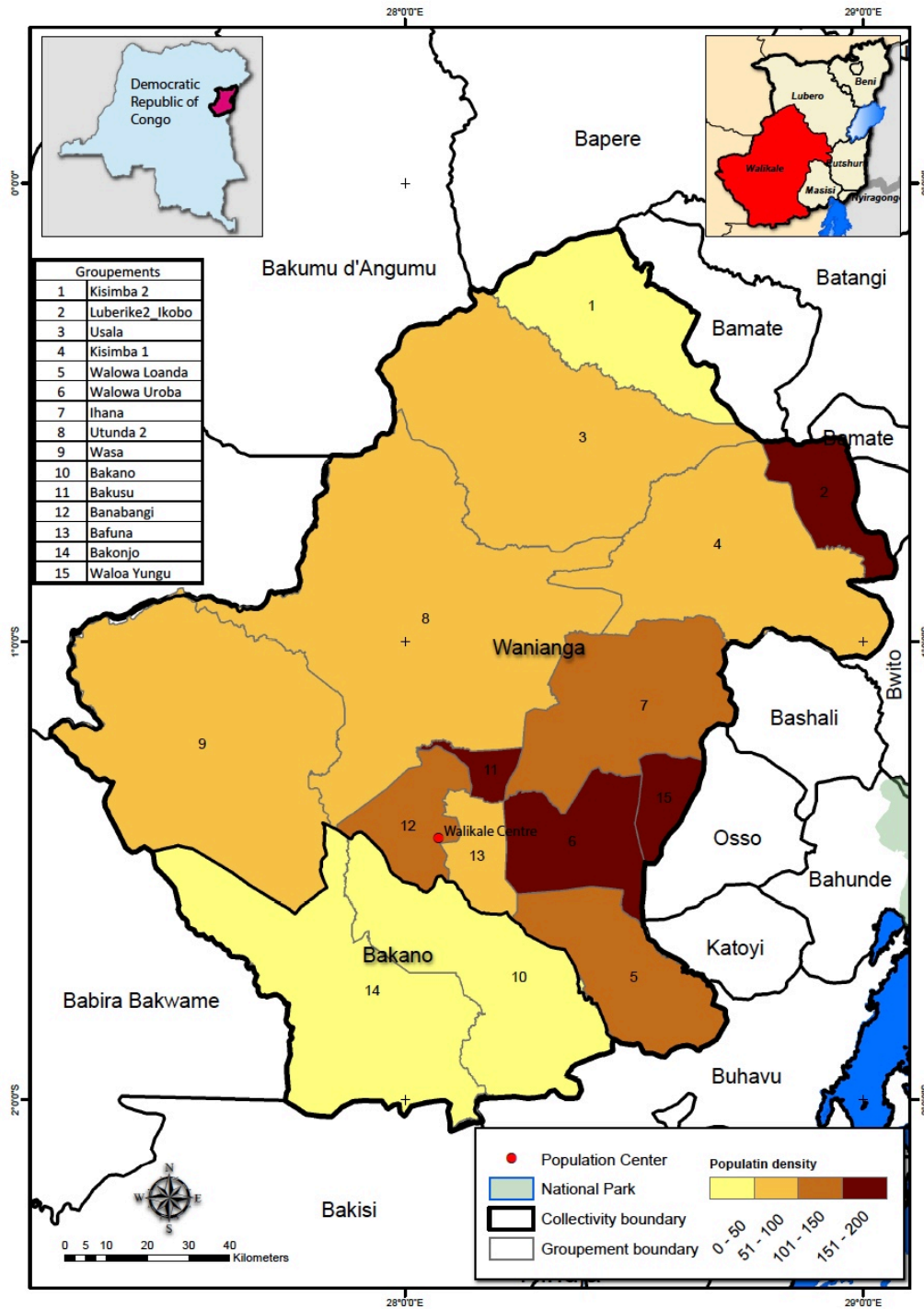
Finally, the territory of Walikale is North Kivu's largest and least densely populated, Walikale, covers a surface area of almost 23,500 km<sup>2</sup> of which roughly 5 percent are located in each of the Maiko and Kahuzi-Biega National Parks. Walikale disposes of an entirely rural population of slightly fewer than 1 million. There are two sectors: the Wanyanga sector, which comprises more than 80 percent of the surface total and almost 99 percent of the population total. The Wanyanga sector is ethno-demographically diverse with the strongest group, the Nyanga contributing nearly half of the population total whereas the Bakano sector is largely dominated by the Kano community. The CAID website (DRC, 2017) estimates the territorial population totals as comprising 40 percent Nyanga, 25 percent Kusu<sup>125</sup>, 10 percent Rega and Kano, 6 percent Hunde and 4 percent Tembo. There are a total of 15 groupement, of which 11 are headed by Nyanga chiefs, two by Kano chiefs, one by a Kusu chief and one by a Bakobo chief.

The following map (Figure 11) provides an estimative demographic snapshot of the Walikale territory from 2017. Its numbers are based on estimates from the CAID website (2017) as well as on those of the six territorial administrations of North Kivu (see series 2.1.4 interviews, 2017)<sup>126</sup>.

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<sup>125</sup> It appears expedient to note here that interlocutors from North Kivu found this number profoundly unconvincing stating that there are less Kusu in Walikale than Kano or even Tembo. As also highlighted in the results discussion Chapter 7, reported ethno-demographic data is oftentimes not reliable due to methodological issues and also due to manipulation for political purposes. Without entering a detailed discussion on precise ethno-demographic numbers, I am limiting the scope of this research to citing the estimated numbers for the Kusu community from the CAID (DRC, 2017) website.

<sup>126</sup> Please see the underlying population tables as well as a detailed description of the methodology of their assembly in Appendix C.



Map conception: Lubunga Mutingamo and Pottek (2017)  
 Data sources: DRC (2017), author fieldwork (2017)  
 Cartographic source: Valio Lubunga Mutingamo, UN-Habitat (2017)  
**Figure 11.** Walikale: Groupements & Population Densities



### 6.3 The Politico-Administrative Structure of North Kivu and the DRC

The DRC disposes of a semi-presidential system that is relatively closely modeled after the French system with a universal adult suffrage-based two-round direct presidential election that requires an absolute majority in the second round. The president appoints the prime minister, who in turn appoints the government. The legislative body comprises two chambers: an assembly that seats 500 deputies and a senate that seats 108 senators. The national assembly deputies are directly elected in the sub-provincial territorial circumscriptions, whereas the provincial assemblies elect the senators. The Constitution stipulates that the office terms for the president and the national deputies are 5 years limited to two terms.

In accordance with the *Global and All-Inclusive Agreement on Transition* that was signed in Pretoria in December 2002 by the main belligerent parties (PPRD, RCD-G, MLC and RCD-ML) of the *Second Congo War*, representatives of civil society and the civilian opposition, as well as with the stipulations of the *Constitution de la Transition de la République Démocratique du Congo* of April 2003, the DRC adopted its fifth and effectively valid Constitution in February 2006 after a popular referendum held in December 2005. In balancing harshly opposed federalist and unitary state conceptualisations, the currently effective Constitution of 2006 (*Constitution de la République Démocratique du Congo*) defines the DRC as a *decentralised unitary state* (DRC, 2006).

The administrative decentralisation of the hitherto highly centralised state is an ongoing process of which major steps have been formally accomplished with the recent (2015) creation of 21 new provinces, paralleled by the scission and abolition of six existing ones. This rearrangement increased the number of provinces from 11 to 26. The spatial rearrangement of the DRC's politico-administrative landscape was accompanied by similarly far-reaching modifications to the country's politico-administrative processes as enshrined in a series of fairly recent organic laws.

On a first level, North Kivu is maintained as a province in the existing boundaries. These had been defined for a first time by the Belgian colonial administration in 1956. However, the 1956 boundaries did not circumscribe the province of North Kivu, but rather the

northernmost district of the province of Kivu, which at the time comprised today's provinces of North Kivu, South Kivu and Maniema.

In 1962 North Kivu was promoted to province status within the newly independent, federally structured Republic of the Congo (*République du Congo*) under its first president Joseph Kasa-Vubu. However, this initial promotion was followed by a series of alternating province status revocations. An important aspect in the controversies around the establishment of the North Kivu province lay in communal disputes and conflicts over administrative boundaries. These opposed primarily the rwandophone (Hutu and Tutsi) communities to several of the so-called *autochthonous* communities of North Kivu: In the political context of the democratisation of the newly independent Congo, the rwandophone groups exerted pressure to exclude the northern territories from the province, most likely in order to augment their own demographic and ultimately also political weight in the provincial jurisdiction, whereas most of the so-called *autochthonous* communities including the Hunde, Nande and Nyanga attempted to increase the size of the province in order to reduce the rwandophones' relative demographic weight (see Willame, 1997 and Bucialimwe-Mararo, 2013).

The controversy over the provincial boundaries came to play an incendiary role to the inter-communal relations between the rwandophone communities and several of the so-called *autochthone* communities that were already suffering from mounting, progressively collectively disputed conflicts over the access to customary land, customary fee payments and the overall legal status of newly immigrated Hutu and Tutsi populations from Rwanda (see Willame, 1997 and Bucialimwe-Mararo, 2013). The conjunction of these disputes led to the outbreak of the so-called *Kanyarwanda War*, in the wake of which the project of dividing the Kivu region into smaller provinces was temporarily abandoned.

Nonetheless, North Kivu was reinstated as a province in 1976 under President Mobutu Sese Seko via the, until this very day effective Ordinance-Law *No 88/1976* of the Second Republic (*République du Zaïre*)<sup>127</sup>. The re-establishment of North Kivu in 1976 was largely

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<sup>127</sup> The former Belgian Congo changed its name and political organisation on several occasions from the Congo Free State (*État indépendant du Congo*, 1885-1908) to the Belgian Congo in (*Congo-Belge*, 1908-1960) to the Republic of Congo (*République du Congo*, 1960-1964) to Democratic Republic of the Congo (*République*

spared the major controversies over administrative boundaries and residence statuses of the early and mid 1960s<sup>128</sup>. And the composition of the DRC's administrative substructure has remained by and large unchanged between 1976 and the recent (ongoing and nearly completed) administrative restructuring that was set in motion by the promulgation of the Third Republic's Constitution in 2006.

As of the Third Republic's Constitution of 2006 (*Constitution de la République Démocratique du Congo*) the DRC defines itself as a unitary but strongly decentralised state. In this logic the 2006 Constitution prescribes a now largely completed administrative reorganisation of the country while confirming the province of North Kivu within its existing boundaries. In this frame, the new Constitution of 2006 and a following set of organic laws comprising, most notably, law 08/016 of 2008, law 11/003 of 2011, law 15/001 and law 15/015 of 2015 wide-sweepingly redefine the interrelations between all levels of the DRC's politico-administrative architecture, as well as the modes of their governance.

For the purposes of this thesis, it appears expedient to provide a brief overview of the latter: The provinces continue to be governed by a governor and a provincial assembly. However, the governor is no longer appointed by the central state in Kinshasa, but is elected by the provincial assembly for a maximum of two five-year terms (this has been effectively the case since 2006, as determined by the 2006 Constitution). The provincial assembly is equally constituted for five-year terms, with 38 of 42 seats standing for election and the remaining four seats coopted from tribal authorities, i.e. from the customary chiefs that govern the lower levels of the province's politico-administrative architecture.

At and below the provincial level (of North Kivu), the new laws have largely confirmed the subordinate politico-administrative sub-entities of North Kivu within their existing boundaries. Important changes however, have been imposed in the way that these entities are (formally) administered, as well as in the way that they relate to the province and the central state in Kinshasa.

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*Démocratique du Congo*, 1964-1971) to the Republic of Zaire (*République du Zaïre*, 1971-1997) to the Democratic Republic of the Congo (*République Démocratique du Congo*; as of May 1997).

<sup>128</sup> The reasons why the provincial promulgation of 1976 stirred little conflict will be briefly examined in the thesis results discussion Chapter 7.

The largest sub-provincial administrative sub-units remain the territories. All territories continue to be administered by central state appointed personnel. The only important change is that four cities (*villes*) have been carved out of the territories' administrative bodies. These cities are the provincial capital city Goma and the northern cities of Beni, Butembo, and Oicha. Whereas central state appointees administer the territories, elected mayors and city councils administer the cities. The territories are considered purely administrative entities without governing powers and without legal personality, whereas the cities are incorporated legal persons. The cities are further sub-divided into communes (*communes*) and finally urban quarters (*quartiers*) that are administered by appointed personnel from the city.

North Kivu's six rural territories are subdivided into seventeen rural communes (*collectivités*). Ten of the rural communes are chiefdoms (*chefferies*) and seven are sectors (*secteurs*). The key difference between the *chefferie* and *secteur* communes lies in the type of their administration: the sector administration is elected by the population, whereas hereditary customary authorities administer the *chefferies*. North Kivu's seventeen rural communes (*collectivités*) are further subdivided into a total of 96 rural districts (*groupements*). Hereditary customary authorities administer all of these 96 rural districts. The 96 rural districts, in turn, contain a total of 5,178 rural villages (DRC, 2005), each of which represents a single or a small number of adjacent villages and the circumjacent land. And like the rural districts, hereditary customary authorities also administer the villages (see the DRC's current set of administrative laws compiled in DRC, 2013).

Hence, the laws that abrogated the Decree-Law 081 of 1998 that had formally concentrated all governing authority for the provinces, cities, rural communes and other sub-provincial administrative entities with the central state have brought significant change to the political processes on the ground by allowing the concentration of some real political power at the provincial level as well as at the cities and rural communes. Congolese law (08/016) refers to the political power-holding sub-provincial entities as *entités territoriales décentralisées* (ETDc) and to those that hold merely administrative capacities as *entités territoriales*

*déconcentrées* (ETDco)<sup>129</sup>. The former are incorporated as legal persons whereas the latter are not. Finally, the former comprise the cities (*villes*) and the urban and rural communes (*communes*, *secteurs* and *chefferies*), whereas the latter comprise the territories (*territoires*), rural districts (*groupements*), villages (*villages*) and city quarters (*quartiers*) (see the DRC's current set of administrative laws compiled in DRC, 2013).

Of all the administrative subentities, by far the most important for the rural populations are the rural communes, i.e. the *secteurs* and the *chefferies*, because in these, a very large portion of the rural administrative powers are accumulated. For example, the rural commune administrations have tax collection authority for certain types of real estate, business and personal taxes; and they also dispose of far-reaching budget authorities (see articles of 104 to 119 of the organic law 08/016, as well as the annually promulgated financial law (*loi de finances*), such as, for example law 14/027 of December 2014).

The commune administrations are also responsible for the administration of public services inside the communes, the upkeep of most central state assets, as well as for the administration of public infrastructures and development projects within their jurisdictions (organic law 08/016 and 15/015). Hence, the administrations of the rural communes are normally the key administrative players, and oftentimes also the key economic players in the rural areas.

But the communal administrative powers also cover a broad spectrum of other areas : the communal chiefs fill the positions of the state registrar and the chief officer of the national police within their jurisdictions; they have the right to arrest, imprison for up to seven days and to raise fees against lawbreakers; and finally, they represent the highest central state and provincial authority within their jurisdictions while also representing the highest communal authorities in their own right (see Organic-Law 08/016, articles 76 to 92).

Whereas the sector community chiefs were appointed directly by the central state until the administrative restructuring of the years 2006 to 2015, they are now elected by a sector council, which in turn is directly elected by universal adult suffrage by the sectors' residents.

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<sup>129</sup> ETDco and ETDc are not official or recognised abbreviations; but they will be applied in the frame of this thesis for brevity purposes.

The central and provincial governments nevertheless maintain control of the sector administrations as these are held responsible to the provincial governor and the republic's president after their investment, means that the provincial governor and the DRC's presidential office have the power to dismiss the sector administrations (see organic law 08/016, articles 76 to 92).

By democratizing the sector communes, the DRC has advanced a noticeable step towards the democratization of the lower administrative entities, which partially responds to key demands of the RCD-Goma delegation and important parts of the rwandophone communities during the negotiations that led to the *Global and All-Inclusive Agreement on Transition* in 2002. The RCD-Goma had demanded the full democratisation of all politico-administrative subentities. The same demand was later recycled by the CNDP and M23 rebel movements during their active years between 2006 and late 2013 (see e.g. BIP, 2006).

The entities below the commune level, i.e. the *groupement* and the *village*, continue to be exclusively administrated by customary authorities. However, these entities are not incorporated as legal persons and they have few formal administrative powers in their own right (their formal role is largely reduced to holding delegate powers from the (sector and chefferie) commune levels for specific administrative tasks). However, outside of their formal roles as administrators for the central state, the *groupement* and village administrations continue to fill crucial semi-formal and informal socio-cultural, administrative, and economic roles in the DRC's rural societies. This is because as customary authorities, they continue to control the access to most of the rural land base in North Kivu and the DRC.

In contrast to the *secteur* communes, the *chefferie* communes are led by traditional chiefs. (Organic-Law 08/016, article 86: "*Le chef de chefferie est l'autorité de la chefferie.*"). The traditional chiefs at the heads of the *chefferie* communes fill the same formal administrative functions and dispose of the same formal responsibilities, rights and privileges as the *secteur* commune chiefs except that the former are not elected. In contrast, their legitimacy rests on a combination of factors including the existence of a recognised territory (*territoire reconnu*), the presence of a population, an investiture (*intrônisation*) in line with and legitimised by local customs and finally, the investiture and recognition by the competent public authorities (*l'investiture et la reconnaissance par les autorités publiques compétentes*),

i.e. by the provincial governor or the president of the republic (Organic-Law 08/016, articles 69 to 92 and 15/015, article 6). It is also expedient to note that whereas the *secteur* commune chiefs are entirely liable to the DRC's penal code as ordinary citizens, only the *chefferie* commune chiefs enjoy a level of diplomatic immunity comparable to that of members of the national and provincial legislative chambers (Law 15/015, article 28 and *Code de Procedure Penale Congolais*, articles 10 to 13).

Hence, whereas the chiefs of all rural communes bear quasi-identical politico-administrative functions, the *chefferie* commune chiefs have managed to uphold, at least in formal terms, an additional level of autonomy vis-a-vis the central state that effectively includes rudimentary elements of the most common conceptualizations of state sovereignty (a recognised territory, the presence of a population, (at least partial) diplomatic immunity for the political leadership, etc.).

The *chefferie* commune chiefs therefore maintain powerful formal roles in the political administration of the DRC's rural regions<sup>130</sup>. But what is more, the integration of selected customary chiefs into the DRC's formal state administration system also represents an endorsement and reinforcement of these chiefs' semiformal and informal roles as customary rulers and authority figures (Tull, 2005; Vlassenroot, 2005; Boshab, 2007). In fact, there are several effective Congolese laws that more or less explicitly confirm this interpretation (see e.g. the code foncier, articles 387 to 389 as well as article 86 of the law 08/016 and article 10 of law 15/015).

It is also important to note that the central state-endorsed *semi-formal* roles of the *chefferie* commune chiefs as customary chiefs may easily outweigh their *formal* roles as central state representatives. This is primarily because customary institutions (that are ultimately all presided by the customary chiefs) remain the central loci for two key powers in

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<sup>130</sup> There are several important caveats to this statement: The central state has the power to depose any member of customary authority and there are hundreds examples in the postcolonial history of the Congo where this power was exercised. But in most periods outside of revolutions, major conflicts and a small number of peaceful periods of administrative restructuring, depositions of customary chiefs are extremely rare (Boshab, 2007). The state has the power to rule over the chiefs, but it usually goes well out of its way to accommodate the chiefs. This is because, as will be highlighted in the results discussion Chapter 7, the central state needs the chiefs, their customary legitimacy and their customary legitimacy-based authority in order to extend its rule into a rural countryside where the central state has very little direct presence.

the rural countryside: the dispensation of justice (as explicitly confirmed in article 163 of the currently effective legislative order 82/020 of March 31<sup>st</sup> 1982) and, even more importantly, the dispensation of land rights (as slightly ambiguously confirmed in articles 387 to 389 of the Land Code 73-021 and very actively and normatively practised throughout most of North Kivu, the wider DRC and many other countries of Sub-Saharan Africa). And although the extents of the customary land base are nowhere defined in Congolese law<sup>131</sup>, an estimated 85 percent of the DRC's landmass continues to be administered by customary rulers (series 1.1.1 interviews, Goma, 2012; see also Tull, 2005).

Hence, despite the central states sovereignty and prerogatives as ultimate proprietor of all land, the customary chiefs remain the key brokers in the DRC's rural land market. And, what is more, the DRC's land market remains by far the most important asset market of the country. And the rural pillar of the land market constitutes the central place where the sustenance and livelihood of almost 80 percent of both North Kivu's and the DRC's population are negotiated.

The roles of the customary administrations and their chiefs as brokers and gatekeepers of land rights in many Sub-Saharan countries have increasingly attracted the attention from African and international scholars over the last two decades (see e.g. Vlassenroot and Huggins, 2005 and Boone, 2014). The chiefs' oftentimes-concomitant roles as dispensers of (informal, semi-formal and formal) justice have yet to meet a similar level of scrutiny; although a growing number of recent works such as those Boshab (2007), Mastaki and Vake (2009) and Baldwin (2016) are examining with topic. Nevertheless, much research waits to be done. This thesis is interested into both aspects of customary power, although the land tenure side will receive privileged attention.

This section has explained important elements of the current politico-administrative architecture of the DRC and the legal footing upon which these are based. The following

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<sup>131</sup> Definitions of the extent of the DRC's customary land base and of the laws that – formally - apply to these have been pending since the promulgation of the DRC's land code 73-021 on July 20 1973, i.e. some 44 years ago.



section will provide an overview of the DRC's formal-legal land tenure system and its relevant codes, as they are effective today.

## 6.4 Relevant Elements of the DRC's Property and Land Ownership Legislations

The effective Congolese land code draws its roots to the land code of the Belgian Congo and therefore ultimately to the Napoleonic Code. The colonial model was initially straightforwardly imported into the newly independent Congo's legal system in 1960, but it was thereafter modified on several occasions<sup>132</sup>. The most far-reaching, consequential and currently still effective modifications lay in the promulgations of what is commonly referred to as the *loi Bakajika* (legislative order n° 66-343) of June 7<sup>th</sup>, 1966, the Constitution (*Constitution Revolutionnaire*) of 1967, the Law 73-021 of July 20<sup>th</sup> 1973 and the Law 80-008 of July 18<sup>th</sup> 1980 (see DRC, 2004; Mastaki, 2004 and Boshab, 2007).

The *Bakajika* law was promulgated in the larger context of the so-called *indigenisation* that regarded itself as a second, social, cultural, legal and economic decolonisation that was to complete the political decolonisation process that had been set in motion via the declaration of independence and the new state formation. The *Bakajika law* established a very rough framework to deal with certain types of colonial property, including the properties of the large majority of former colonial expats that had not acquired citizenship after the Congo's declaration of independence in 1960.

As a follow-up to the *Bakajika* law, the so-called *Constitution Revolutionnaire* of 1967 undertook a *de jure expropriation-nationalization* of all hitherto private *real, immobile-by-nature* property as it declared the Congolese state the sole owner of all land and its (natural) surface and sub-surface resources. The laws 73-021 and *loi 80-008* of 1973 and 1980 then established the property system that has been confirmed by the most recent Constitution of

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<sup>132</sup> For the following discussion please see also the preamble and articles 1 to 399 of the DRC's currently valid land code (see DRC, 2004).

2006 and that therefore remains effective until this day<sup>133</sup>. One of the most salient elements in the Congolese land law is that it formally establishes three sub-domains of land administration (given that all land is defined as state property, super-category of land domains is the domain of the state, which comprises all land within the DRC's territorial confines): the public, private and customary domains. The public and private domains dispose of their own, fairly distinct laws, whereas the rules and regulations of the customary domain are quasi undefined.

Following Napoleonic civil code traditions, the DRC's land code divides property rights into three categories: firstly, *real* (corporeal) property rights (*droits reels*) including mortgaged debt on *real* property; secondly, all other debt and obligation related rights (*droits de creance et d'obligation*) and thirdly, rights in ideational entities (*droits intellectuels*). Debt and obligation rights and intellectual property rights are only vaguely defined in the land code as they form an integral part of the civil code. As they are of only peripheral interest to the thesis' problematic, they are not part of the following discussions.

By contrast, *real* property rights are primarily defined in the land code and they enclose rights to movable and immovable *real* property. Moveable property can, with certain restrictions<sup>134</sup> be fully owned, exclusively used and freely disposed of. This moveable property is only of secondary relevance to the following discussions.

This contrasts with *immobile real* property. Immobile real property can be immobile by *nature*, by *incorporation* or by *destination*. The *immobile-by-incorporation* category comprises all permanent buildings, fixtures and (non-harvested) plants. The *immobile-by-destination* category includes all animals, machineries and temporary fixtures that are part of an agricultural or forestry enterprise. Both, the *immobile-by-incorporation* and the *immobile-by-destination* categories underlie comparable rules and regulations as those that apply to most *mobile real* property classes and they are of only secondary relevance to the following discussions.

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<sup>133</sup> Article 9 of the constitution (DRC, 2006) and article 53 of the land code (DRC, 2004) stipulate that all land, sea and their (*natural*) surface and subsurface resources belong to the state; for all further detail the current Constitution refers to the land code (see the discussion below).

<sup>134</sup> Like in any other sovereign jurisdiction, the DRC's property codes hold significant property disposal restrictions for all resources that are considered *strategic*.

Finally, the *immobile-by-nature* category comprises all land and sea surfaces, their surface compositions and their surface and subsurface resources that lie within the territorial confines of the DRC. This category comprises by definition the entire Congolese land mass and it occupies the centerpiece of the Congolese land code. What is more, this category comprises the key resource that is squarely located at the heart of the socioeconomic, socio-cultural and political competitions in North Kivu that this thesis undertakes to analyze: agricultural land.

In a further step, the DRC's land code subdivides the *immobile-by-nature* category comprising all land into the public and private domains. All land in the public domain is assigned to a public use or a public service (“... *affectées à un usage ou à un service public*” (article 55, Land Code)). Land in the public domain comprises, most notably, all sovereign open sea and inland water bodies, all national and provincial parks, various types of lands reserved for the interests and activities of the public sector, mines and other sites of natural resource exploitation and several previously *expropriated-nationalized* colonial concessions including a few that are now used as communal farms or communal grazing lands. But by far the most important (by geographic extension) subcategory of land in the public domain is *customary* land; *customary* are those lands that had been classed in a separate domain as *terres indigènes* during the colonial period<sup>135</sup>. And according to more or less consistent estimates by Mathieu et al (1999), Tull (2005) and Huggins et al (2006) the customary domain lands comprise over 85 percent of the DRC's national territory.

By firstly, formally taking possession of all land within its sovereign territory and by secondly, classing the customary lands into the *public domain*, the Congolese state has formally appropriated for itself all administrative powers to these lands. However, by and large, the customary lands remain effectively administered by the customary chiefs (see e.g. Tull (2005), Vlassenroot and Huggins (2005), Pottek (2007) Pottek et al. (2016)). This will be explained in the following paragraphs.

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<sup>135</sup> Neither the DRC nor its colonial predecessor have established statewide registries of these lands and hence, there exists no centralized database or other comprehensive information pool. However, it is estimated that roughly 85 percent of the Congolese land mass fall into this *customary lands* sub-category (see e.g. Vlassenroot and Huggins, 2005).

The provisions pertaining to the customary domain are entirely contained in the land codes second section's second chapter. But this chapter comprises only three articles: Article 387 acknowledges the existence of *customary lands* and rudimentarily defines these within the new regulatory framework ("*Les terres occupées par les communautés locales deviennent, à partir de l'entrée en vigueur de la présente Loi, des terres domaniales.*"). Article 388 defines and describes the *customary lands* in similarly vague terms as those lands that are occupied or exploited according to local customs ("*Les terres occupées par les communautés locales sont celles que ces communautés habitent, cultivent ou exploitent d'une manière quelconque – individuelle ou collective – conformément aux coutumes et usages locaux.*"). And article 389 of the law states that a future presidential ordinance will take over to define and regulate in more detail the usage rights for the customary lands ("*Les droits de jouissance régulièrement acquis sur ces terres seront réglés par une Ordonnance du Président de la République*").

Thus, while claiming all administrative powers over the customary lands for the central state, the land code nevertheless recognizes ethno-tribal customs and usage rights with regards to these lands. But the code provides only a very vague definition of the customary lands, it does not even attempt to define the rights that are applicable to these and it sets even vaguer administrative boundaries between the customary lands and the directly state administered public lands. Article 389 of the land code stipulates that a future presidential ordinance will define the customary jurisdictions and their applicable laws, but no ordinance, legislative order or land code addendum has been passed in the 44 years that have elapsed since the promulgation of the land code<sup>136</sup>. The facts that firstly, roughly 85 percent of the DRC's agricultural land lies within the quasi-unregulated customary sub-domain (see e.g. Vlassenroot and Huggins, 2005) and that secondly, land tenure conflicts within the customary sub-domain and between the customary and other domains are legion are underlining the regulatory void at the center of the land code. The fact that this ever-looming void has remained unfilled for four and a half decades may suggest that it is, in fact, not the product of an innocent omission,

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<sup>136</sup> Given that the customary sub-domain occupies an underprivileged role in the DRC's formal legal codes, it will not be discussed in this subsection in any more detail. By contrast, profound discussions of the customary domain and its land tenure systems will follow in the geopolitical portrayal section of the thesis as well as in the thesis' results discussion Chapter 7.

but rather of a political calculus. I will discuss the socio-political and regional geopolitical roles of this regulatory void in some detail in the results discussion Chapter 7.

Articles 57 to 386 regulate private rights to land. As highlighted above, the Congolese state claims the right of possession to all land within its territorial confines, but it bestows, grants or sells large sub-bundles of rights that it calls usage rights (*droits de jouissance*) to natural or legal persons of private or public right. These sub-bundles of so-called *usage rights* are (at least in the case of the DRC's most robust accumulation of land rights, i.e. in the case of the *concession perpetuelle*) actually much larger than what their name suggests as they formally include rights of usage, income generation, rights enforcement, as well as limited rights to control and exclude third parties and finally, limited rights to transfer or alienate property rights to others. As such, the *usage rights* to land that are attributed under Congolese law to some types of concession holders appear, at first sight, nearly as expansive as the property rights catalogue that civil law jurisdictions in francophone Europe and North America apply. Nevertheless, there are several critical distinctions that call for a brief summary of private Congolese land rights.

The DRC's land code approves three categories of private land rights bundles and it refers to these as perpetual concessions, ordinary concessions and land servitudes. Furthermore, the land code (Articles 49 to 51) stipulates that private property rights to land, i.e. the extended usage rights (*droits de jouissance*) as outlined above, to any one of the above three categories can be acquired by donation, testament, succession, convention or acquisitive prescription. In all cases, the formal-legal effective validity of the rights contract is (according to Congolese law) exclusively established via a certificate of title registration (Article 59, Land Code). In both contemporary and historical practise, however, certificates of titles are by and large only issued and registered for the strongest accumulations of property rights, i.e. the perpetual concessions, as well as, to a lesser degree also for the *emphyteose* (see the legal definitions below).

The property rights acquisition by convention comprises three main subcategories of land rights transfer contracts. These are firstly, the granting or sale of an *ordinary, emphyteutic* concession to a private or public person by the central state authority; secondly, the conversion of an *ordinary, emphyteutic* concession into a perpetual concession at the hands of the central

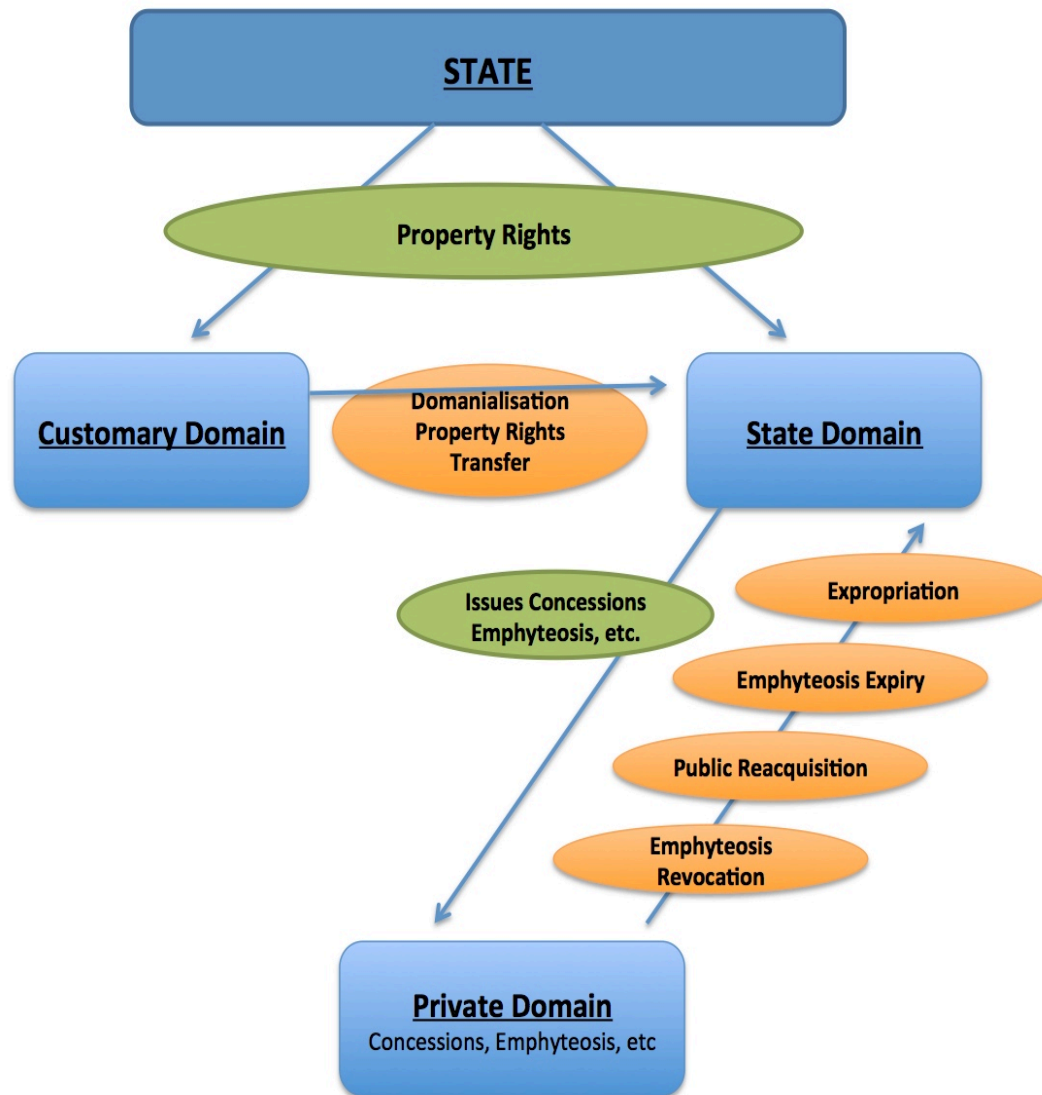
state authority and thirdly, the transfer of an existing private concession (of any type) between a private or public land rights holder and a private or public transferee. The first two examples represent the source of legitimacy to the third example: the state assigns private property rights to private and public persons, these are thereafter free to transfer to third parties. It is important to note, however, that the state can only assign private property rights to a land parcel that is already listed in the private domain of the state. But the state also has the power to relist public domain lands as private domain lands and vice versa. And this relisting can be applied in transfers from both the public domain of the state and the customary domain of the state to the private domain of the state. In the case of a land rights transfer from the customary domain of the state to the private domain, the process is referred to as *domanialisation*. Such a *domanialisation* is unidirectional and permanent: private lands cannot be retransferred into the customary domain.

The so-called *domanialisation* (Figure 12) involves a private applicant, the office holder of the DRC's land registry as well as the relevant land administrating customary authority of the land to be transferred into private ownership<sup>137</sup>. In operational terms, the process involves an official application by the private acquirer, a verbal or written report by the customary land authority stating that the land is not exploited in a permanent contract relation with a customary client (the modalities of the enquiry are defined in articles 193 to 203 of the land code 73-021), the payment of a fee and the endorsement and final transfer by the state authority. The land law provides a 2-year period in which *domanialisation* transfers can be contested and theoretically also reversed by customary rights claimants. During this two-year period the land cannot be registered as a perpetual concession, but it can be held in an emphyteotic lease agreement. After the two year period any type of private rights concessions can be acquired for the land in question including a *perpetual concession* (the latter only after five years) if a series of permanent exploitation (*mise en valeur*) conditionalities are met and the applicant is a Congolese citizen. The following image

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<sup>137</sup> As highlighted in the study area Chapter 6 on property rights in the DRC, the state owns all surface and subsurface resources including all land and water bodies. However, it is also highlighted that a substantial amount of property rights can be transferred by the state to private rights holders. When referring to *private land ownership*, this thesis refers to these privately tenable ownership rights.

provides a simplified model of the domanialisation process and the main elements that it involves:



Conception: Pottek (2014)

Data source: author fieldwork (2012, 2013, 2014)

**Figure 12.** A Model of the *Domanialisation* Property Rights Transfer

The by far strongest accumulation of private land ownership rights lies in the perpetual concession (*concession perpetuelle*). The perpetual concession therefore comes closest to reflecting the original civil code notion of full property rights ownership. This is because it is formally of unlimited duration and it allows an indirect transfer of land rights to third parties. Even if indirect, this transferability combined with heritability and wide-ranging exclusionary

rights creates the legal basis for the effective existence of a monetized land market for perpetual concessions in the DRC (series 1.1.1, 1.1.3, 1.1.4 and 2.1.4 interviews, Goma, Rutshuru and Masisi, 2012, 2013 and 2013). However, a few caveats apply: These are firstly, that perpetual concession rights are restricted to Congolese citizens (Article 80, Land Code), secondly, that only a few if any credit institutions are willing to mortgage the large number of smaller, low value concessions that are barely integrated into the market economy<sup>138</sup> and thirdly, despite the fact that perpetual concessions represent the majority of large surface private landholdings, less than one percent of the DRC's land surface is held under perpetual concessions (Huggins et al. 2006).

Perpetual concessions are by name of unlimited duration. Nevertheless, given that all private property rights ultimately underlie the state ownership prerogative, the Congolese state reserves itself the right to unilaterally withdraw and retrieve these rights by either of the following means: expropriation for public utility (*eminent domain*), reacquisition at cost for reasons related to inappropriate usage or lack of enhancement or exploitation, contract expiry if the private concession or servitude are of limited duration, *escheat* and *extinctive prescription* (Land Code, Article 101). Besides the state's ultimate ownership prerogatives, perpetual concessions can also be partially or entirely terminated or transferred to private or public third parties by *acquisitive prescription* (Article 51, Land Code). This means that perpetual concession lands can be formally and legally lost to illegal land occupants after an effective occupation period of ten years<sup>139</sup>.

The second most robust property rights for land are bundled in so-called ordinary concessions (*concessions ordinaires*). Ordinary concessions are really a collective category or super-category of conceptually quite diverse land rights arrangements. These comprise the

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<sup>138</sup> The information contained in this statement is based on my series interviews 1.1.1, 1.1.3, 1.1.4 and 2.1.1 interviews with small emphyteosis and concession holders and representatives of the land registries in Masisi and Rutshuru as well as with a mortgage specialist (series 2.4 interview) of the Rawbank in Goma in 2012 and 2014.

<sup>139</sup> It should be noted that many Western and African civil and common law jurisdictions contain acquisitive prescription (or their common law analogs, *adverse possession*) clauses. In fact, acquisitive prescription represents a coherent extension of the *mise en valeur* conditionalities implied for private property rights maintenance in much of the Congolese land law as well as in many ethno-tribal customs of many of the region's traditional communities. However, this research suggests that where the rule of law is weak and where people are forced to flee their homes, acquisitive prescription and comparable customs and regulations can easily serve as a legalization mechanism for what is ultimately land theft by forceful occupation.



following subcategories: firstly, the *emphytéose*, secondly, the *superficie*, thirdly, the *usufruit*, fourthly, the *usage* and fifthly, the *location*. All of the subcategories that are gathered under the ordinary concession umbrella represent taxed, tradable usage rights that are temporarily limited to renewable durations of three to twenty-five years.

The *emphytéose* represents the strongest accumulation of private land ownership rights that a foreigner (i.e. non-Congolese citizen) may acquire. Like the perpetual concession, the *emphytéose* comprises a bundle of extended usage rights that formally include rights of usage, income generation, rights enforcement, as well as limited rights to control and exclude third parties and finally, limited rights to transfer or alienate property rights to others. The most important distinctions between the *emphytéose* and the perpetual concession lie in the former's temporal limitation to a twenty-five years (renewable) duration period and increased restrictions on the usage purposes: the state habitually prescribes the types and modes of admitted land use. Furthermore, the state reserves itself the rights to retrieve and redeem all *emphyteutic* property rights if the land use prescriptions including tax obligations or any other contract clauses relating to land use or other are not maintained by the *emphyteutic* property rights holder (articles 109 to 122, Land Code). And finally, whereas the land code (Article 251) stipulates that *emphyteutic* property rights can be mortgaged, our fieldwork indicates that at the very least in North Kivu, credit institutions are wary to do so<sup>140</sup>.

Two important features of the *emphytéose* are that firstly, the emphyteutic rights holder has a right to partial reimbursement for permanent ameliorations applied to the land (including 75% of the residual value of any installed buildings) in case of expropriation or state refusal to renew the *emphyteutic* contract after expiration at the end of the 25 year term (as long as the *emphyteutic* rights holder's taxation, maintenance and land use obligations are not at cause). And secondly the *emphytéose* can be converted into a perpetual concession upon formal application after a minimal period of five years if firstly, the applicant and *emphyteutic* rights holder is a Congolese citizen and secondly, he is in good standing with the relevant land

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<sup>140</sup> The lender wariness to mortgage *emphyteutic* and inferior land rights relates to all the points that apply to loans on perpetual concessions plus the factor that *emphyteutic* and inferior land rights represent limited term concessions with additional land use restrictions. The limited duration of the land rights contract and the additional conditionalities that apply to their maintenance significantly increase the risks implied in a loan or mortgage.

agencies (i.e. taxes are paid in full and the land is put to use as prescribed by the land registry office). Finally, *emphyteutic* contracts cover the large majority of longterm property rights contracts for small land possessions and a considerable portion of the longterm property rights contracts for medium and large-sized lands possessions. Nevertheless, less than one percent of the DRC's land surface is held under *emphyteutic* property rights concessions (Huggins, et al. 2006).

The rights and conditions that the land code stipulates for the *superficie* are similar to those of the *emphytéose*. However, the following important distinctions apply: Firstly, the *superficie* cannot be converted into a perpetual concession; secondly, *superficie* land rights contain no inherent guarantees to reimbursement for property ameliorations such as buildings in case of expropriation or non-renewal at the end of the twenty-five years fixed term contract<sup>141</sup>. Similar to the *superficie*, the *usufruit* represents a renewable maximum twenty-five years concession that allows the *usufruit* rights-holder to benefit from the fruits of the land. However, the *usufruit* rights-holder has no rights to a reimbursement for the ameliorations that he undertakes with regards to the land in case of expropriation or non-renewal of the *usufruit* contract at the end of the twenty-five year contract term<sup>142</sup>. *Usufruit* rights may or may not be exclusionary (depending on the wording of the contract); they are always inalienable, but heritable.

The lowest order concessions are the *usage* and the *location*. The *usage* represents a fifteen-year renewable state lease term of usage and income rights to a land parcel or building; the rights may or may not be exclusionary, they are inalienable but heritable and may be sublet to a third party for the duration of the original lease. The *location* represents a renewable three-year state lease term of usage and income rights to a land parcel; they are inalienable, non-heritable and may be not sublet to a third party.

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<sup>141</sup> However, article 131 stipulates a maximum reimbursement of the residual value of property ameliorations such as buildings if the relevant state agency judges these useful for its own purposes.

<sup>142</sup> However, article 137 stipulates a maximum reimbursement of 50% of the residual value of property ameliorations such as buildings if the relevant state agency judges these useful for its own purposes.

## **7 Results Discussion: Presenting and Integrating Bird's Eye and Close-Up Views of Tenure Conflict**

This chapter presents and discusses the research results of this thesis. The chapter is organized into two subchapters, the first of which discusses the first four sub-hypotheses of the thesis and the second and last subchapter discusses the fifth and last of the five sub-hypotheses. The reason for this chapter's separation into two subchapters is explained in the following paragraphs. But before plunging into the explanation, the main hypothesis will be recalled in the following paragraph:

### **Main Hypothesis:**

**Land is the most important asset to the majority of North Kivu's populations and it is at the center of intense competitions, disputes and conflicts over socio-economic security, social identities and economic wealth. The Congo's successive central states have not applied, or even designed their land tenure systems to manage these competitions, disputes and conflicts, but rather as a political tool to selectively extend their rule into the rural countryside. This has spawned and aggravated quasi-permanent tensions and recurring and widespread conflicts over land tenure and social identities; and particularly in the four southern territories of North Kivu it has contributed to the nurturing of intense and longstanding geopolitical tensions that have erupted on several occasions in recent history as communal, civil and interstate wars.**

The main hypothesis is composed of a succession of logically concatenated elements, which makes the hypothesis relatively long and complex. Hence, it appeared expedient to break the hypothesis down into individual components, which led to the formulation of five sub-hypotheses (see also Chapter 4 for the complete hypothesis and sub-hypotheses statement). The first four of the five sub-hypotheses break down the first sentence of the main hypothesis. The purpose of these four hypotheses is to acquire as detailed as possible images of the main social (demographic, cultural, legal, administrative and political) elements that

drive land tenure competition, dispute and conflict in North Kivu. These images of existing land tenure conflicts in North Kivu are the main fieldwork contribution of this thesis.

In comprising the main hypothesis' last two sentences, the fifth sub-hypothesis is in itself complex. The complexity lies in its very nature because it ventures to interpret the findings of the first four primarily fieldwork-based hypotheses as elements within their wider historical and geopolitical settings. And by consequence, the verification of the fifth sub-hypothesis requires a solid analysis of the local and regional histories, or, i.e. at least of those elements of regional history that reciprocate with the regionally elevated land tenure competition levels in ways that induce tenure disputes to multiply and link with disputes and conflicts over other issues and ultimately to spawn large-scale conflicts, violence and war.

Large-scale conflicts and wars are major topics of scientific and popular interest that attract a substantial amount of scrutiny in the international conflict studies literature. This counts even for conflicts in Sub-Saharan Africa, although Sub-Saharan topics are generally underrepresented in Western studies of global affairs. By consequence, there exists a significant amount of literature on conflict in North Kivu, the DRC and African Great Lakes region. Some of this literature has been discussed in the literature discussion in Chapter 3. In that section I have argued that several works on the meso to macro level conflicts represent detailed, astute and convincing analyses. But I have also argued that analyses and also qualitative and quantitative raw data lack from the grassroots level of tenure conflict in North Kivu. The fieldwork that is inscribed into the verification process for the first four sub-hypotheses has served to provide a glimpse into North Kivu's tenure conflict universe. The fifth sub-hypothesis weaves the fieldwork results of the first four hypotheses into conjointly fieldwork and document-based analyses of the research topic-relevant elements of regional history and geopolitics.

Given the composite nature of the main hypothesis and the logical concatenation of the succession of distinct sub-hypotheses, it appeared expedient to follow the organisational pattern that is provided by the (main and sub-) hypotheses also in their discussion. Hence, I have organised the hypothesis discussion into five different sections, each of which follows a brief representation of the sub-hypothesis that the following data analysis and its discussion venture to verify. The first sub-hypothesis is discussed in the following paragraphs.

## **7.1 A Close-Up View of Tenure Conflict in North Kivu**

The discussion of the first four sub-hypotheses adopts a close-up view of more or less recent land tenure conflicts. The close-up view was attained via grassroots-level fieldwork in several rural and a few urban locations in North Kivu. The fieldwork results comprise those of a questionnaire survey with roughly 700 small farmers in 28 rural locations scattered throughout the six territories of North Kivu, those of an interview survey chiefly with rural land market participants, as well as last but not least those from case study research work on land tenure conflict from four rural locations in Masisi and Rutshuru. The case study research work comprised primary and secondary document analysis, interview work, as well as some observational elements.

### **7.1.1 On the Value of Land as Economic and Social Asset**

**Sub-hypothesis 1: Land constitutes the most valuable economic asset to the majority of rural residents in North Kivu and it also represents one of the most valuable social assets, as it represents a key source of social identity. This makes land the most critical single asset in North Kivu and land rights one of the most politically sensitive items of Congolese law.**

The purpose of this first section of the fieldwork results in relation to sub-hypothesis 1 is to identify the role of land in the lives of the rural populations of North Kivu and to underline its socioeconomic, socio-cultural, sociopolitical significance.

Similar to numerous other agrarian<sup>143</sup> societies in Sub-Saharan Africa (see e.g. Platteau, 1996, 1998, 2004 and 2009 and Deininger, 2003), an important majority of North Kivu's populations is directly dependent on the land base for its immediate survival and physical wellbeing (see e.g. Vlassenroot, 2000). According to (estimative) statistics by the Congolese ministry of planning, the direct agrarian land dependency rate lay around 80 percent in North Kivu in the early 2000s (DRC, 2005). Given that the same source estimates

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<sup>143</sup> For the purposes of this thesis, agrarian comprises both cultivating agriculture and animal husbandry.

that roughly 80 percent of North Kivu's populations are rural residents (DRC, 2005)<sup>144</sup>, the direct agrarian land dependency rate can be expected to lie close to 100 percent in the rural areas.

My own fieldwork supports that estimate at least by tendency: 93 percent of all 580 (questionnaire #1, question #5) respondents indicated that either cultivating agriculture, small or large livestock raising were their principle livelihoods. There is certainly a bias in this data, because several of the respondent cohorts were contacted through agricultural cooperatives or NGOs that worked primarily with small farmers. Nevertheless, the low corrected sample standard deviation (question #5;  $N_T = 580$ ;  $Y_T = 542$ ;  $P_T = 0.93$ ;  $S = 0.06$ ;  $P_S = 0.07$ )<sup>145</sup> also hints that the agricultural dependency rate is comparably high throughout the rural populations in general. This finding is also supported by the responses to questionnaire #1, question #18, by which 97 percent (question #18,  $N_T = 561$ ;  $Y_T = 549$ ;  $P_T = 0.98$ ;  $S = 0.03$ ;  $P_S = 0.03$ ) of respondents regard the property of farmland or stable access rights to the latter as the most important economic asset.

Furthermore, for 89 percent (question #18;  $N_T = 561$ ;  $Y_T = 501$ ;  $P_T = 0.89$ ;  $S = 0.06$ ;  $P_S = 0.07$ ) of the respondents, land and rights to land also represent the most important inheritance asset. Therefore, under the above-discussed reserve that there is likely to be a slight bias towards higher agrarian dependency rates in the questionnaire data, a preliminary conclusion can be drawn that there is a strong socioeconomic dependence on the land base amongst the rural populations of North Kivu and that land, indeed, represents the most critical economic asset to most rural residents.

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<sup>144</sup> The cited source is dated 2005; more recent rural population estimates lie mostly between 72 and 75 percent for North Kivu. As highlighted in the study area Chapter 6, the thesis is using estimates of 72 percent (see DRC, 2017)).

<sup>145</sup>  $N_T$  = the total number of respondents to the survey question or subpart thereof.

$Y_T$  = the total number of affirmative responses to the survey question or subpart thereof.

$P_T$  = the proportion of affirmative responses to the survey question or subpart thereof ( $P_T = Y_T / N_T$ ).

$S$  = the corrected sample standard deviation between individual proportions of affirmative responses from all the 24 survey locations.

$P_S$  = the corrected sample standard deviation  $S$  divided by the total proportion  $P_T$  ( $P_S = S / P_T$ ). This measure indicates how large the standard deviation is in relation to the value  $P_T$ .

This conclusion is unlikely to surprise, as the development literature on Sub-Saharan Africa (see e.g. Platteau, 1996, 1998, 2000, 2004 and 2009; Deininger, 2003; Collier, 2008 and Boone, 2014) including that on North Kivu and the wider DRC (see e.g. Vlassenroot, 2000) more or less consensually acknowledges the economic dependence of most African societies between the Sahel region and northern Namibia on farming incomes and that much of these farming incomes are generated in kind, i.e. within subsistence and semi-subsistence environments. Furthermore, it is similarly widely acknowledged that the DRC suits this latter category even more than most of its regional neighbours (Vlassenroot and Huggins, 2005). Hence, it can be safely stated that to the majority of North Kivu's entire population, and to the very great majority of North Kivu's rural populations farmland constitutes the most valuable economic asset.

But the questionnaire data also hints that land plays other roles in the lives of North Kivu's rural populations: a large majority of the respondents indicated that land also represents a key social resource. Indeed, 86 percent of the respondents (question #18;  $N_T = 561$ ;  $Y_T = 483$ ;  $P_T = 0.86$ ;  $S = 0.06$ ;  $P_S = 0.07$ ) underlined the function of land as a source of social status and 71 percent ( $N_T = 561$ ;  $Y_T = 397$ ;  $P_T = 0.71$ ;  $S = 0.08$ ;  $P_S = 0.11$ ) emphasized that land constitutes an important link between the respondents and their tribal or ethnic (*ethno-tribal*) communities. And 58 percent (question #18;  $N_T = 561$ ;  $Y_T = 323$ ;  $P_T = 0.55$ ;  $S = 0.11$ ;  $P_S = 0.18$ ) stated that land represented an important spiritual or metaphysical link between themselves and bygone generations.

Furthermore, question #42 asked to rate by descending hierarchy of importance the following four social identity generating concepts: the respondents' *relation to land*, her *ethnic* or *tribal affiliation*, her *national affiliation* and her *affiliation* with a sovereign *state* (the DRC) on a scale from 1 to 4. As the below Table IV indicates, *land* obtained the highest score in the survey. With this in mind, a caveat must be added that only 226 questionnaire respondents from 14 survey locations in the territories of Masisi, Rutshuru and Nyiragongo out of the total 580 questionnaire #1 respondents from 24 survey locations responded to question #42. Hence,

the results from the quantitative evaluation of this data must be regarded with some additional caution<sup>146</sup>.

Nevertheless, it is worthwhile to note that the data strongly suggests that for the rural populations of North Kivu land takes up a prominent position in the hierarchy of anchor points upon which social identities are built. The results for question #42 are as indicated in Table IV:

**Table IV.** A Survey on Land and Social Identity

Parameter	Land	Ethnie/Tribe	Nation	State
NT	226	226	226	226
X	2.00	2.33	2.11	3.56
S	1.00	1.12	0.93	0.88
PS	0.50	0.48	0.44	0.25

Data source: author fieldwork (2012, 2013, 2014)

It also appears noteworthy to highlight that the results of the quantitative analysis of the survey data are solidly backed by the results from follow-up interviews with several respondents that were held during or immediately after the surveys, as well as by numerous interviews held independently of the survey. For example, a customary client farmer from a Hunde community in Kichanga (Masisi) stated:

*“We all live from the land. Those that have a lot of land are rich, those that have little are poor and those that have none starve, dig minerals or join a militia. The land is our life. But it is also our land that makes us Hunde. The land is the root of our community. And we are losing this land. And with it, we are being robbed of our food and of who we are ...”* (Series 2.1.1 interview, Masisi, 2012).

The majority of North Kivu’s rural population is directly dependent on the land base for its physical survival and well-being. And what is more, land ownership is also a prime element in social status. For example, the customary organograms (Figures 13 and Appendix

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<sup>146</sup> As for all the statistics derived from the questionnaire data, representativity cannot be claimed. Nevertheless, the results suggest trends that may be expected to be detectable within the rural populations of North Kivu at large.



B) that were drawn by Hunde Nande, Hutu and Nyanga authorities clearly indicate how both socioeconomic and sociopolitical stratification in the customary units is very much based on land rights. Indeed, it appears that the lack of land ownership represents a social stigma to at least some of North Kivu's agrarian communities. This is well illustrated by a quote from a Nande farmer in Lubero:

*"It is the land that feeds us. If we lose our land, we will die and our children will also die or become beggars or bandits. But even if we find a way to survive, without land we are leaves in the wind. We have no more connection to our people or to the spirits of our forefathers. Where could we go? And who would we be?"* (Series 2.1.1 interview, Lubero, 2012).

And finally, besides the highlighted socio-economic and socio-political aspects, there appears to exist an additional dimension to land ownership at least for some communities in North Kivu: According to several interviewees from the Nande and Hunde communities (series 1.1.2 and 2.1.1 interviews in Masisi and Lubero, and 2012) land ownership, or at least the intrinsic relation to land and communal territory has metaphysical or spiritual dimensions. Thus, one interviewed member of the Nyanga community explained:

*"You whites ("bazungu") you think you can just buy and sell land, make some money and move from Europe to Africa and back. You are like the Rwandans. Maybe you don't have ancestors that live in your lands. Or maybe you have just lost the connection. But we know that this makes people sick. It makes them crazy. And it even kills people...."* (Series 2.1.1 interview Walikale, 2012)

Hence, according to some interviewees, only the groundedness in ancestral soil as achieved by living on and tilling the ancestral lands provides access to the spirit world. For several respondents, losing the contact to the land implies losing the contact to the spiritual world, which again can lead to mental and physical illness and possibly even death.

The discussion of the first sub-hypothesis subchapter has highlighted elements of socioeconomic and socio-culturally defined human-land relations in North Kivu. The perspective was based on quantitative evaluations of views and opinions gathered from North Kivu's rural populations through questionnaires and from several interviews I conducted as well as with some input from the established literature. As a brief summary, all studied sources indicate that land constitutes not only the most coveted economic asset for the rural

populations of North Kivu, but also one of the most important social assets. This finding comes as no surprise, as much of the literature on North Kivu, the DRC, the African Great Lakes region and, indeed, much of Sub-Saharan Africa highlights the importance of land to social, economic and political processes (see e.g. Willame, 1997; Mastaki, 2004; Vlassenroot and Huggins, 2005; Tull, 2005; Young, 2007 and 2012; Mastaki and Vake, 2009 and Huggins,).

Nonetheless, as pointed out in the thesis' literature discussion, with a small number of exceptions, most of the above-cited works are rather vague on the characteristics and essence of human – land relations. Information is missing on multiple levels including the socio-cultural, the socioeconomic, the normative and the legal and also the spiritual or metaphysical elements of these relations. And secondly, very few studies provide quantitative data on these relations from the rural villages. The ongoing discussion of the thesis' fieldwork results serves to provide several additional insights.

### **7.1.2 Snapshots of Dispute and Conflict Prevalence in North Kivu**

**Sub-hypothesis 2: Disputes and conflicts over land tenure are quasi-ubiquitous in North Kivu, they are present in most villages, and they affect the majority of the rural populations either as directly involved actors or as victims of insecurity and violence.**

The verification of this second sub-hypothesis leans primarily on a basic quantitative evaluation of the survey data (questionnaire #1; questions # 13, 21, 31 and 32 and questionnaire #2, questions 15, 26, 32 and 33) from a total of 28 fieldwork locations throughout North Kivu. In a second step, the results from the data will be compared to the existing literature on conflict prevalence in North Kivu as well as to the results from interviews I conducted with representatives of interviewee groups 1.1 and 2.1 in Goma and the province's rural interior in 2012, 2013, and 2014.

As pointed out in the previous section 7.1.1.1, North Kivu's land is a highly coveted resource. And, as already suggested on various occasions throughout the thesis, farmable land is also a relatively rare resource in the surveyed locations of North Kivu: In 24 locations of the 4 southern territories 74 percent of the 580 questionnaire #1 respondents reported to be short of farmland such that they could not reliably meet the needs of their households (questionnaire

#1, question #13;  $N_T = 580$ ;  $Y_T = 429$ ;  $P_T = 0.74$ ;  $S = 0.13$ ;  $P_S = 0.17$ ) whereas amongst the 112 respondents from the 4 survey locations of the two northern territories 64 percent experienced relative land shortage (questionnaire #2, question #15;  $N_T = 112$ ;  $Y_T = 72$ ;  $P_T = 0.64$ ;  $S = 0.08$ ;  $P_S = 0.12$ ). As such, North Kivu's farmland is at the centre of intense resource competitions.

More striking than the findings on land shortage were those on disputes and conflicts over land rights: Of 569 respondents from 24 survey locations across the southern four of North Kivu's six territories, a total number of 256 respondents, corresponding to 45 percent of the entire cohort had, at one time or another, been personally implicated<sup>147</sup> in a dispute or conflict over land (questionnaire #1, question #21;  $N_T = 569$ ;  $Y_T = 256$ ;  $P_T = 0.45$ ;  $S = 0.09$ ;  $P_S = 0.21$ ). As the relatively low corrected sample standard deviation indicates, the tenure dispute or conflict implication rates were consistently high throughout the entire fieldwork area. In fact, between the survey locations the value lay consistently between 30 and 60 percent with only three outliers (two at 67 percent and one at 19 percent).

Similarly striking was that 78 percent of the southern respondents (question #32;  $N_T = 510$ ;  $Y_T = 400$ ;  $P_T = 0.78$ ;  $S = 0.14$ ;  $P_S = 0.18$ ) had been seriously affected<sup>148</sup> by violent conflict over land either as active participants or as passive victims. And a total of 67 percent (question #31;  $N_T = 490$ ;  $Y_T = 330$ ;  $P_T = 0.67$ ;  $S = 0.13$ ;  $P_S = 0.19$ ) had been seriously affected by violent inter-communal conflict over land.

As highlighted above, the results for questionnaire #1 were obtained from the four southern territories of North Kivu. A similar set of questions was posed via a total of 112 questionnaire #2 in 4 survey locations of the so-called *grand nord* region of the province that comprises the two territories Beni and Lubero. It appears expedient to highlight that the even smaller sample of survey responses from the *grand nord* clearly precludes any claims towards

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<sup>147</sup> For the purpose of this thesis, personal implication was defined as the personal implication as active party to a dispute or conflict over land rights by the respondent or one of her household members.

<sup>148</sup> For the purpose of the thesis, the descriptor *seriously affected* refers to serious harmful effects from both direct, active participation in land tenure conflict and passive *indirect exposure* and it comprises bodily harm to the self or a household member, forced displacement by self or household members, important destruction of material goods such as residences or harvests and significant security-related commute or travel inhibitions that result in a significant deterioration of the quality of life.

the population-wide representativity of the results. Once more, statistical representativity is not the aim of the study. The purpose is rather to highlight local events and possible tendencies from as many locations as possible so as to suggest starting points for future, more representative research. In the meantime, the numbers obtained in the questionnaire survey can be expected to constitute rough approximations of the realities in the ground.

In the *grand nord* region of North Kivu the rate of respondents that had been actively involved in a dispute over land tenure was 32 percent (question #26;  $N_T = 112$ ;  $Y_T = 36$ ;  $P_T = 0.32$ ;  $S = 0.06$ ;  $P_S = 0.19$ ). Furthermore, the rate of respondents that had been seriously affected by violent conflict over land was 47 percent (question #32;  $N_T = 112$ ;  $Y_T = 53$ ;  $P_T = 0.47$ ;  $S = 0.16$ ;  $P_S = 0.33$ ) and the rate of respondents that had been seriously affected by violent interethnic conflict over land was 21 percent (question #33;  $N_T = 112$ ;  $Y_T = 24$ ;  $P_T = 0.21$ ;  $S = 0.19$ ;  $P_S = 0.93$ ).

On a first level of evaluation, the two questionnaire surveys on land tenure conflict prevalence highlight two striking points: These are firstly, that disputes and conflicts over land tenure are extremely widespread, to the point that a very strong minority of the surveyed population section in North Kivu has been directly involved as actors in disputes or conflicts over land tenure and that simultaneously, a striking majority of respondents has been victim of the effects of violent tenure conflicts. Whereas in the southern territories of North Kivu many of these conflicts disposed of inter-communal patterns, in the northern territories, the patterns were predominantly intra-communal.

This distinction between conflict patterns (inter-communal versus intra-communal) also serves as an introduction to a series of subsequent findings: Firstly, the experience of active land dispute or conflict participation appear to be much more widespread in the southern territories than in the surveyed areas of the north. Secondly, whereas a substantial number of people appear to be or to have been seriously affected by violent land tenure conflicts in the northern territories, the reported rate is visibly lower than in the southern provinces. And finally, the rate of inter-communal conflict experience in the northern territories is less than one third of that in the south.

There are several possible explanations for the discrepancy between the two geographically distinct data sets. The first explanation would be that the lower cohort and sample sizes (only 112 questionnaire from 4 locations as opposed to 580 questionnaire from 24 locations) are bound to have increased the margin of error in the data. However, there are several indicators that the explanation lies elsewhere. In fact, the northern territories are ethno-demographically much more homogenous to the extent that in three of the four survey locations a single ethnic group (the Nande) constituted not only the large majority of the questionnaire respondents, but also that of the local population (as highlighted by survey respondents in subsequent interviews (2012)). The high degree of ethnic homogeneity in these regions can be reasonably expected to reduce the probability that land tenure conflicts oppose members of different ethnic groups.

But the ethnic factor in land relations is not a primary element of the analysis at this stage. The interest is more prominently directed towards the prevalence of land tenure conflict per se. And despite the apparently lower tenure conflict rate in the northern territories, the key conclusion is that disputes and conflict over land tenure are extremely widespread throughout the surveyed locations of North Kivu.

High rates of tenure conflict were also suggested for both the northern and southern regions by interviews I held in the six territories between 2012 and 2014. Like the survey data, all interview series indicated a higher rate of tenure conflict in the southern regions as well as a significantly higher rate of ethnic identity involvement.

And finally, the results from the survey data are clearly corroborated by more or less recent literature on North Kivu that is progressively shining light on the strong presence of land tenure conflict in the province and the wider region (see e.g. Bucialimwe-Mararo, 2001; Mastaki and Vake, 2009 and Bouvy, 2015). However, I know of no studies that would provide quantitative estimates on the prevalence of conflict by rates of farmer involvement or any other numerical terms. Whereas this thesis cannot provide statistically representative figures, it nevertheless provides order of magnitude estimates. Furthermore, the discussion of the second sub-hypothesis has clearly confirmed and underlined the wide dispersion and high prevalence of land tenure conflict throughout large swaths of North Kivu; the next subchapter will take a closer look at the conflicts and identify conflict types as well as elements involved.

### **7.1.3 The Main Types of Tenure Conflict, Key Elements and Examples**

**Sub-hypothesis 3: There are several distinct tenure conflict types in North Kivu, most of which relate to intense competitions in the land markets on the one side and bureaucratic failures oftentimes paired with bad faith on the other. Several conflict types also relate to conflicting (normative) socio-cultural and legal definitions of land ownership and related ambiguities in the land tenure system. The most violence and propagation-prone tenure conflict types link to historically grown patterns of land and social identity-related inter-communal conflict.**

The fieldwork for the establishment of a conflict typology started off in an initial step with the results from the fieldwork from my Master's thesis of 2007. In a second step, grey literature from NGO, UN and research institute sources (see e.g. Kasisi and Brown; Mastaki and Vake, 2009; UN Habitat, 2009, 2011 and 2013) on tenure conflict in North and South Kivu were consulted and analyzed for existing patterns. In a third step, tenure conflict experts (mostly land tenure mediators and customary authorities) with substantial fieldwork experience in land tenure conflict were consulted (series 1.1.1, 1.1.2 and 1.1.6 interviews, Goma, Masisi, Rutshuru, 2012). Based on the information derived from these consultations, existing land tenure conflicts were categorized and tentatively typologized.

The results were then translated into a small number of questions that were integrated into the questionnaire #1 survey. The integration of the tentative typology into the questionnaire survey via an inquiry on type-specific conflict experience served in a first step to distill quantitative information on the prominence of the identified tenure conflict types in North Kivu, and in a second step to provide a starting point for more deeper-going inquiries on the factors that played key roles in each of the identified conflict types. These deeper-going inquiries rested primarily on additional interview series with the affected populations, i.e. in most cases with individual farmers and representatives of small farmer communities, but also with customary authorities, landholders, conflict mediators, land registry employees, legal personnel, local politicians from North Kivu, and local and international researchers and consultants with experience in the field.

In the following paragraph the dispute and conflict typology I developed will be briefly described. The brief description will be followed by a quantitative portray of the questionnaire

survey results on dispute and conflict types. This will be followed by a table that outlines in key words the most important factors involved in the eruption of each one of the presented conflict types. In a fourth step the conflict types and involved factors will be explained in some detail and the fifth and last section of this chapter will discuss the most important elements of the conflict typology and their role in the verification of the third working hypothesis.

The following eight categories of land tenure disputes and conflicts were developed based on previous research experience in North Kivu (2006 and 2007), the grey literature (i.e. Mastaki, 2004; Mastaki, 2005; Mastaki and Vake, 2009; Un Habitat, 2009; Un Habitat, 2011; UN Habitat, 2013 and Sylla, 2011) and preliminary interview analysis (see the methodology Chapter 5).

The eight categories are as follows: (1) succession disputes & conflicts (this category comprised mainly succession disputes within or sometimes between small farmer families or clans; succession conflicts between major clans or customary authorities were comprised in a separate category), (2) customary succession disputes & conflicts (this category comprised succession conflicts within or between major clans and customary authorities that normally disposed of medium to large numbers of land tenure clients, which in turn tended to generate *trickle down* tenure conflicts amongst the affected land tenure clients), (3) contract or title legitimacy disputes & conflicts including conflicts over (acquisitive or extinctive) land right prescriptions (this category comprised conflicts over contested land tenure contracts or titles in both the customary tenure and the formal tenure domains), (4) tenure conflicts over taxes or customary land use fees (*redevances*) (this category comprised conflicts over the non-payment of taxes or fees raised for the exercise of land rights, i.e. for the use or exploitation of land), (5) boundary disputes & conflicts (this category comprised conflicts over plot delimitations or boundaries, normally between neighbors), (6) land use conflicts (this category comprised primarily conflicts between cultivators and cattle raisers, but sometimes also between either of the above two groups and hunters or between farmers and national park authorities over the use of farmable land in protected parks), (7) ambiguous or forceful occupation conflicts (this category comprised conflicts over the unilateral and contested occupation of land such as by squatting) and finally (8) forceful eviction conflicts (this category comprised conflicts over the

forceful eviction of legitimate or illegitimate land occupants; see also Table V for a compact description of the eight tenure conflict types).

**Table V.** Land Tenure Conflict: A Descriptive Typology

Type #	Type designation	Type Description
1	Succession Disputes & Conflicts	Mainly succession disputes within or sometimes between small farmer families or clans; succession conflicts between major clans or customary authorities were comprised in a separate category
2	Customary succession disputes & conflicts	Succession conflicts within or between major clans and customary authorities that normally disposed of medium to large numbers of land tenure clients, which in turn tended to generate trickle down tenure conflicts amongst the affected land tenure clients
3	Contract or title legitimacy disputes & conflicts	Conflicts over contested land tenure contracts or titles in both the customary tenure and the formal tenure domains
4	Tenure conflicts over taxes or customary land use fees	Conflicts over the non-payment of taxes or fees raised for the exercise of land rights, i.e. for the use or exploitation of land
5	Boundary disputes & conflicts	Conflicts over plot delimitations or boundaries, normally between neighbors
6	Land use disputes & conflicts	Primarily conflicts between cultivators and cattle raisers, but sometimes also between either of the above two groups and hunters or between farmers and national park authorities over the use of farmable land in protected parks
7	Ambiguous or forceful occupation conflicts	Conflicts over the unilateral and contested occupation of land such as by squatting
8	Forceful eviction conflicts	Conflicts over the forceful eviction of legitimate or illegitimate land occupants

Data source: author fieldwork (2012, 2013, 2014)



A brief regard of the dispute and conflict categorizations will disclose that the first six of the eight distinctly defined categories are described by their points of contention, i.e. the by the immediate *sources* of disagreement or dispute (*succession* versus *title legitimacy* versus *taxation* versus *boundaries* versus *land use*, etc.) whereas the last two categories are defined by the anti-cooperative methods of conflict negotiation (*land occupation* versus *forceful eviction*). The rationale of this categorization choice lies in the fact that the latter two categories normally represent medium to large or very large-scale conflicts in which multiple points of contention are superposed and together with the evolving forcefulness or violence of the conflict negotiation methods, this superposition tends to hide or overshadow the contentious issues that lie at the root of the conflict (see Burton, 1990 and 1996).

A second element that requires emphasis is that none of the above dispute or conflict categories were defined as exclusive. This means that one and the same conflict can be referenced in several different categories. Similarly, in several cases, referenced tenure conflicts involved more than one of the survey respondents. By consequence, the same tenure conflict could be referenced by different respondents and depending on their vantage point, it could also appear in several different categories. Hence, it is worthwhile to underline that neither the conflict typology nor the basic statistics derived from the questionnaire data should be regarded as absolute by category or dimension. It is not the aim of this study to produce an authoritative conflict categorization and even less to produce statistically representative values for land tenure conflict rates per category. Nevertheless, the typology suggests itself as a useful intermittent point of land tenure conflict analysis for a rural conflict environment, such as that of North Kivu, of which very little is known. And moreover, the tentative quantification of conflict types promises to provide a rare numerical snapshot of land tenure dispute and conflict experience in the 24 rural questionnaire survey locations of North Kivu.

Of 569 questionnaire #1 respondents from the 24 survey locations in the 4 southern territories of North Kivu, 45 percent (question #21;  $N_T = 569$ ;  $Y_T = 256$ ;  $P_T = 0.45$ ;  $S = 0.09$ ;  $P_S = 0.21$ ) had been involved in a dispute or conflict over land tenure. Broken down, into conflict types, the results were as follows: 8 percent (question #24;  $N_T = 569$ ;  $Y = 45$ ;  $P_T = 0.08$ ;  $S = 0.04$ ;  $P_S = 0.45$ ) of the respondents had experienced a household level succession or inheritance dispute or conflict; 3 percent ( $N_T = 569$ ;  $Y = 18$ ;  $P_T = 0.03$   $S = 0.07$ ;  $P_S = 2.22$ ) had

experienced a customary authority level succession or inheritance dispute or conflict; 12 percent ( $N_T = 569$ ;  $Y = 69$ ;  $P_T = 0.12$   $S = 0.06$ ;  $P_S = 0.54$ ) had experienced a dispute or conflict over plot delimitations or boundaries; 11 percent ( $N_T = 569$ ;  $Y = 65$ ;  $P_T = 0.11$   $S = 0.07$ ;  $P_S = 0.58$ ) had experienced a dispute or conflict over contract or title legitimacy; 5 percent ( $N_T = 569$ ;  $Y = 26$ ;  $P_T = 0.05$   $S = 0.07$ ;  $P_S = 1.48$ ) had experienced a dispute or conflict over land use; an additional 5 percent ( $N_T = 569$ ;  $Y = 26$ ;  $P_T = 0.05$   $S = 0.05$ ;  $P_S = 1.17$ ) had experienced a dispute or conflict over land taxes or customary fees; 4 percent ( $N_T = 569$ ;  $Y = 25$ ;  $P_T = 0.04$   $S = 0.05$ ;  $P_S = 1.09$ ) had experienced a dispute or conflict over unilateral and contentious land occupations, and finally, 3 percent ( $N_T = 569$ ;  $Y = 18$ ;  $P_T = 0.03$   $S = 0.07$ ;  $P_S = 2.08$ ) had experienced a conflict over forceful evictions. The total number of affirmative conflict responses (= the total number of tenure dispute or conflict experiences, all types counted individually per respondent) outnumbered the total number of affirmative conflict respondents (= the total number of respondents that had been involved in one type or another of tenure dispute or conflict) because the typology responses were not exclusive and respondents could mark more than one types of experienced dispute or conflict. The results are displayed in the following table:

**Table VI.** Tenure Conflict Type Prevalence

#	Type of Dispute or Conflict	NT	YT	PT	S	PS
1	Inheritance or succession	569	45	0.08	0.04	0.45
2	Customary succession	569	18	0.03	0.07	2.22
3	Contract or title legitimacy or validity	569	65	0.11	0.07	0.58
4	Land taxes or customary fees	569	32	0.06	0.06	1.15
5	Boundary delimitation	569	69	0.12	0.06	0.54
6	Land use	569	26	0.05	0.07	1.48
7	Contentious occupation	569	25	0.04	0.05	1.09
8	Forceful eviction	569	18	0.03	0.07	2.08
X.1	Total Conflict Respondents	569	256	0.45	0.09	0.21
X.2	Total Conflict Responses	569	322	0.57	0.14	0.24

Data source: author fieldwork (2012, 2013, 2014)

The questionnaire survey has provided a rough quantitative image of the prevalence of the most prominent conflict types in the surveyed areas of North Kivu. As highlighted in the methodology Chapter 5, the questionnaire surveys also had an important qualitative element because they served as a foundation for a series of interviews with rural stakeholders of land tenure dispute and conflict. These interviews were held during and immediately after the questionnaire surveys; and they enquired more profoundly on the dispute and conflict experiences, as well as on the factors that influenced the evolution of such conflicts.

The following table (Table VII) presents a synthesis of the results from the interviews held with small farmers as a follow-up to the questionnaire work, as well as from interviews with land tenure conflict stakeholders including medium and large landholders, customary authorities and land tenure conflict mediators. The results are presented in key words for compactness and clarity. More detailed explanations will follow in subsequent paragraphs.

**Table VII.** A Land Tenure Conflict Typology: Central Factors

<b>Type #</b>	<b>Description</b>	<b>Central Factors</b>
1 - Succession disputes (household level)	Farming household level disputes over inheritance issues	Shrinking family land plots, intra- and inter-family rivalries, weak documentation culture (limited tendency to document agreements and choices), significant inter-tribal differences of succession practices, differences between tribal norms and state law, various types of fraud
2 - Succession disputes (customary authority level)	Customary authority- level succession disputes	Competition between clans of customary authorities for economic and political power; weak documentation culture: controversial, oftentimes undocumented customary succession rights and practises, weakly documented pedigrees and bloodlines; meddling by the central state and state elites that seek to increase influence over the customary structures
3 - Contract validity/ legitimacy disputes	Disputes over validity or legitimacy of land rights & contracts	Accumulating backlogs of contract and title registrations; weak documentation culture and technical capacity facilitating errors and fraud: e.g. multiple sales are commonplace. Also: forced displacement leading to resales of seemingly vacant land and its re-occupation; ambiguous rules and practises for ownership validation and maintenance; ambiguities in Congolese land law and tribal customs; widespread ignorance law and customs
4 - Disputes over land fees or taxes	Disputes over customary land fee or land tax payments	Conflicting customs, norms and practises within the semi-formal land tenure sector, as well as between the semi-formal and formal sectors; widespread ignorance of customary practises and state law; ambiguities in the Congolese land law; political instrumentalization of the customary land fee disputes
5 - Boundary disputes	Disputes over plot boundaries	Technical, cadastral and documentation weakness at both tribal and state institutional levels facilitating both errors and fraud

Data source: author fieldwork (2012, 2013, 2014)

**Table VII. A Land Tenure Conflict Typology: Central Factors**

Type	Description	Central Factors
6 - Land use disputes	Disputes over land use	Rising competitions for land leading to vanishing unused or fallow surfaces that in the past served cattle raisers to commute between pastures and wells etc.; erosion of traditional, semi-formal land use and secondary rights contracts; lack of replacement by formal contracts; unilateral cattle grazing by herdsmen in existing plantation versus forceful occupations of pastures by cultivators; cattle theft; accumulating animosities and ethnicisation of conflict fault lines
7 - Contentious land occupations	Unilateral occupation of land	See all factors listed under types 1) to 6); plus: resistance against recent and/ or decades-old cases of eminent domain (e.g. unilateral creations of national parks); conflict related displacement; popular sentiment of being squeezed out by foreigners; ethno-political mobilisation; lack of coherent legal authority and contract enforcement; small arms proliferation; unstable balances of power; involvement of armed groups
8 - Forced evictions	Forced evictions of legitimate or illegitimate land occupants	See all factors listed under types 1) to 7); plus: widespread involvement of armed groups

Data source: author fieldwork (2012, 2013, 2014)

### **Six widespread dispute types and sources, two types of aggravation**

Nearly all of the surveyed land tenure conflicts originated in one of the first six *source* categories<sup>149</sup>, i.e. they started off either as disputes over succession, contract or title

<sup>149</sup> Infer to the first six dispute and conflict categories as *source type* disputes and conflicts because they are defined by their source, i.e. their major point of contention; whereas the last two categories are defined by the unilateral or violent strategies and actions that stakeholders adopt in their negotiation. My documentary,

legitimacy, property boundaries, land use or land fee payments. The most important contributing factors are listed in key words in Table VII.

**Succession disputes** (of both types 1 and 2 combined) together represented some of the most widespread tenure conflict source types for both the customary and the formal state domains. The very large majority of cases cited in the survey data were small-scale disputes that opposed individuals inside families or families within larger clans and they were oftentimes mediated by family or clan elders or by representatives of the customary hierarchy. In nearly all cases, small-scale succession disputes appeared to be fuelled by a conjunction of demographic pressures and a dwindling land resource base on the one side<sup>150</sup> and conflicting, confusing, ignored or contested inheritance practices on the other<sup>151</sup>.

Only indirectly present via secondary *follow-up* disputes, but nevertheless cited by roughly 3 percent of the questionnaire respondents were a small number of large-scale succession conflicts, all of which opposed families or clans of customary nobility that laid claims to contested land administration positions inside customary hierarchies. In some cases, the contested positions had become vacant as a result of deaths. In other cases, military, state or, in some cases from the first millennial decade, RCD or CNDP *rebel state* authorities had instrumentalized existing lineage disputes to replace customary authority holders that opposed

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interview and case study based fieldwork indicates that these latter two conflict types oftentimes develop out of one or more unresolved disputes or conflicts of the first six types.

<sup>150</sup> It appears worthwhile to note that succession and inheritance practices and regulations vary among the ethno-tribal groups of North Kivu, as well as between tribal customs and state law. Broadly speaking, the region's major agrarian societies follow patrilineal models in which land is divided in different ways between sons. Indeed, the way that family plots are bequeathed or otherwise transmitted and divided between a family's male progeny oftentimes differs even within one and the same ethnic group, i.e. between individual tribes and clans. In any event, with an average of more than five children per household, farm sizes are dwindling particularly across the densely populated highlands of eastern North Kivu. In the most affected regions, i.e. in Nyiragongo territory, southern Rutshuru and eastern Masisi, many family holdings are well below one hectare and they are increasingly too small to allow the successor generations and their families to survive on them. Series 1.1.1, 1.1.2, 1.1.4, and 1.1.6 interviews have consistently pointed to the fact that the dwindling farmland resource base is an important factor in an increasing number of household level succession disputes.

<sup>151</sup> On numerous occasions respondents described succession disputes where the deceased person had left no formal will. In many such cases, divergences between different customary practices or between customary practices and formal state law tended to fuel disputes among the heirs. Similarly, within ethnically mixed families or families or clans under the customary jurisdictions of other ethno-tribal groups, conflicting customary inheritance practices often played a major role in succession disputes. As previously highlighted, the large majority of household level succession disputes constituted small-scale events. However, this did not preclude several of them to be carried out in violent terms.

these groups with tribal nobility members of their own choice. Unresolved succession disputes within customary hierarchies oftentimes produced secondary *follow-up* conflicts between the customary land clients of the involved clans of tribal nobility. The most significant conflicts tended to branch out downstream and proliferate into a multitude of contract legitimacy-related conflicts at the rural grassroots level, while simultaneously extending upstream whenever litigating parties proved capable of mobilizing support from tribal militias, central state or rebel state administrations, from factions of the national military, central state administrations or political parties. One of the four case studies that underlay the tenure conflict typology discussed in Subchapter 7.1 involves ongoing tenure conflicts that have at their root a politically engineered succession dispute at the most senior level of Hunde customary authority<sup>152</sup>.

**Contract legitimacy disputes** comprised well over 20 percent of all disputes cited in the questionnaire survey (affecting 11 percent of the questionnaire #1 respondents) and they constituted, together with disputes over successions and inheritance as well as with disputes over boundary limitations, the most widespread dispute type. Contract legitimacy disputes exist in both the customary and the state land domains and they comprise a very broad and diverse spectrum of disputes that all share the common denominator that the validity or legitimacy of an existing customary or formal state issued verbal or written contract or title to land rights is contested by at least one of the involved parties. As such, contract legitimacy disputes are oftentimes linked to other disputes including succession disputes, boundary disputes, land use disputes and taxation or fee disputes. Many contract legitimacy disputes are inherently very small or small-scale disputes, but some subtypes have an immense propagation and violence potential. Given the extremely heterogenous character of the contract legitimacy type category and the propagation potential of some of its subtypes, it appears expedient to discuss the category in some detail. The following paragraphs will highlight some of the most common subtypes of these disputes as well as salient factors in their development.

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<sup>152</sup> See also Bouvy, 2015 for a case study of a large-scale tenure conflict in South Kivu that involves a dispute over customary succession at its center.

Most of the disputes over contract or title validity or legitimacy played at the small-scale level. In the customary domain, small-scale contract legitimacy disputes appear to be oftentimes simply a result of a lack of documentation. The latter appears to result in both errors and fraud: several questionnaire respondents and interviewees related examples where verbal conventions that had been applied for several years were contested, sometimes by neighbors, by previous occupants or by customary authorities themselves and the lack of documentary evidence submitted the fate of customary clients to the mercy and moral integrity of customary authorities.

A widespread subtype of contract legitimacy disputes in both the customary and the formal state domains related to contract superpositions, i.e. to overlapping contracts. In many cases, overlaps may have resulted from *bona fide* registration errors that were inadvertently triggered by technical and administrative weaknesses at the customary or formal land registry levels.

An important factor relating to contract superpositions in the customary domain appears to be that the customary tenure systems in North Kivu are barely formalized; they traditionally rely on proximity and complex personal relationships between small landholders and the customary hierarchies. But rapid population growth and, more importantly, the massive population displacements of the past two decades, have undermined the traditionally close personal relations within customary tenure structures. Several series 1.1.1, 1.1.4 and 1.1.6 interviewees have related that in many cases, the normally relational proximity-based customary land administrations are helplessly overstretched by the demographic changes in their jurisdictions. Nevertheless, over 85 percent of the land in North Kivu (Tull, 2005) and over 98 percent of the land in the wider DRC (Huggins et al. 2006) remain administered by tribal customs.

The low degree of formal land ownership is partially due to the fact that in most rural areas of North Kivu, there exists simply no formal state administration that could compensate for the administrative weaknesses of the customary systems. Nevertheless, it appears that the demand to formally register contracts and titles is increasing rapidly. And this fast-growing demand, paired with the formal registry's institutional weakness, has lead to mounting, at times months to years-old contract and title registration backlogs. The registration backlogs, in



turn provoke entry-ports for registration errors, erroneous contract overlaps and fraudulent multiple sales.

In the above-described difficult institutional environment, there is little opportunity for potential land rights acquirers to check up on the land's ownership history and the associated legitimacy of a contract. Interviewed small landholders from the Sake region in proximity to the provincial capital Goma (2012) have indicated that pre-ownership formalization due diligence procedures can take months or years, can be costly and can easily surpass the financial capacities of small farmers. Conversely, legitimate owners at times find it difficult to prove their ownership to interested buyers. It is interesting to find that in the context of institutional incertitude, even formal land transfer processes in the state domain oftentimes return to pre-formal methods for establishing valid ownership rights, such as by drawing on oral testimonies from neighbors and customary authority figures.

Due to mounting backlogs in contract registration within the formal land registries, tenure contracts can now be endorsed and registered at the Court of First Instance (*Tribunal de première instance*), which helps to process the growing backlog of registry demands. One problem, however, is that the endorsement process is relatively expensive and remains out of reach for most small farmers. And secondly, while facilitating the registration process, the addition of another agency into the process also increases coordination requirements and adds a possible entry port for other types of errors. And certainly, *bona fide* errors are not the only consequence of registration backlogs and other types of institutional weaknesses in the land registries. Indeed, my questionnaire, interview and case study work hint at several cases where legitimate land owners, illegitimate land occupants, customary authorities and even land administration officials appear to have sold conflicting rights to the same parcels of land to several different buyers. For example, a land registry official from Rutshuru stated:

*“Double-sales are a major problem in North Kivu and elsewhere in the Congo. One part of the problem is that sales registries are inefficient and take time and sometimes by error and sometimes by fraud land is resold before it is registered and there is no way for the registry to know. But fraud inside the land administrations is a big problem, too. We have a vast problem of unpaid public functionary salaries, corrupt morals and impunity here in the Congo. I could give you tons of examples of all kinds of land fraud. But you'll understand that I can't. In any case, here in Rutshuru, if we catch a scammer in the office he is out and we inform our superiors*

*and the police. But you know about the police, right? You pay them a baksheesh and you're their best friend...*" (Series 1.1.1 interview Walikale, 2012).

The following paragraphs will present and discuss several prominent, violent propagation-prone subtypes of contract legitimacy disputes and conflicts in both the customary and the formal state domains. The presentation and discussions are based on series 1.1.1, 1.1.2, 1.1.3, 1.1.6 and 2.1.6 interviews that were held in the field in 2012, 2013 and 2014. The discussion will begin with examples from the customary domain followed by examples from the formal ownership domain.

Most contract legitimacy disputes in the customary domain are of very small scale and they typically involve individual households and customary authorities over the interpretation of customary land rights contracts. In this context, it is expedient to note that the customs of several of North Kivu's agrarian communities, dispose of very different types of land rights contracts. Some of which are limited to relatively short terms, whereas others are limited to individual or multi-year periods; some are limited to one individual generation and others again are in their design more or less permanent (see also the simplified organograms of customary land tenure, Figure 13 and Appendix B).

Some of the fieldwork for this thesis suggests that the different types of customary land rights contracts are less than well known to many of the customary land tenure clients. And this appears to be very much the case in cross-ethnic tenure conflict constellations. Indeed, several of the interviewed land tenure conflict mediators (series 1.1.6 and 2.1.6 interviews; North Kivu, 2012 and 2014) highlighted that ignorance of land tenure rights and practices were key issues in many tenure disputes and conflicts in both the customary and the state domains. One interviewed mediator stated:

*"... in a surprising number of cases it appeared that the conflict participants had little to no idea of what their rights and obligations were. For example, many people don't know about the different durations of different types of contracts. This is particularly problematic in cross-ethnic land relations because there can be misunderstandings. Or one of the parties can use a potential misunderstanding in his favour. A mwami can give out a short term land contract without clearly highlighting the duration to someone that is not familiar with a community's contract types; or alternatively, a client can enter a short term contract and then say that he was tricked and mobilize members of his community to retain the land.*

*More complicated cases include usage conditionalities or customary prescription. Very few people fully understand these, their ambiguities and their implications. It could appear useful if contracts were simplified and became more alike; but this would reduce the flexibility to meet the needs of the populations".* (Series 1.1.6 interview, Masisi, 2014).

Within certain contexts, customary contract legitimacy disputes that related to unknown or misunderstood orally transmitted conditions and clauses of customary land rights contracts have developed extremely high violent conflict propagation potential. This was, most notably, the case in a small number of regional historical contexts in which very large amounts of customary tenure contracts were entered within short time periods between clients and patrons of different ethno-tribal backgrounds. In the territories of Masisi and Rutshuru, i.e. in some of the most conflict-affected regions of North Kivu and the wider DRC, this context was given on three historical occasions.

The first of these was linked to the colonially organized migrations of Hutu and Tutsi peoples into the eastern Kivu region (mostly Rutshuru and Masisi in North Kivu and Kalehe in South Kivu) in the frame of the colonial state-orchestrated *Mission d'Immigration des Banyarwanda* (MIB), of which the objective was to relieve demographic pressures in several famine-affected regions of Rwanda while funneling a manual work force to the colonial farms and agro-enterprises in the Kivu region. The MIB program ran from the mid 1930s to the mid 1950s and it settled mostly members of the Rwandan Hutu community primarily throughout the fertile regions of the Virunga and Mitumba mountains in heretofore mostly Hunde dominated areas of Masisi and Rutshuru; as of the early 1950s, the colonial administration (see e.g. Spitaels, 1953; Willame, 1993 and Tull, 2005) began to realize that the orchestrated population movements were spawning communal conflicts over land tenure and other issues in some of the villages in Masisi and Rutshuru as both the arriving immigrants and the locally established mostly Hunde, but also Shi, Nyanga and Nande populations were progressively resisting the integration of the newcomers into the existing social and economic fabrics of the rural areas. The second and third comparable occasions were linked to the immigration and installment of mostly Tutsi refugees in the wake of communal conflicts and state-orchestrated ethnic cleansings in the frame of the so-called *Revolution Sociale* in 1959 in Rwanda, as well as of the political struggles in Rwanda and Burundi of the 1970s to early 1980s. Here, as in the

previous case of the MIB project, the customary authorities of the local communities largely welcomed the newcomers as new cohorts of land clients whereas resident populations progressively opposed the installation of increasing numbers of potential rivals for the land base (see also Willame, 1997; Tull, 2005; Vlassenroot and Huggins, 2005 and Bucialimwe Mararo, 2013).

In interviews I held with a group of Hunde student activists in Goma (2012) it was consistently claimed that the land rights contracts entered with members of the immigrant Hutu and Tutsi communities after the two major immigration waves prior to 1994<sup>153</sup> represented temporarily limited so-called *kishoke* contracts that are normally not transferable between generations. One activist stated:

*“When the Gishari chefferie was abolished and later again when the Rwandan Tutsi refugees arrived from Rwanda, our (Hunde) community helped out by giving them land. But it was understood that the situation is temporary. Nobody had planned for hundreds of thousands of immigrants and refugees to settle permanently in our lands. At least no one from our community had that in mind. Therefore the land contracts that our customary authorities entered were temporary kishoke agreements. This allows landless people to use community lands for a certain amount of time. But once the Rwandans were installed, they stayed by force, usurped our lands, our territory and even some of our customary authorities...”* (Series 1.3.4 interview, Goma, 2012).

When I investigated the issue further with a customary Hunde authority his answer was more nuanced:

*“When the Rwandans arrived we gave them land because we had land, they needed land and the state pressured us to help. I know that many Hunde notables sold land to the Rwandans, some outright sold it for cash and others made them (the Rwandans) their clients. I know that many contract relations were kishoke (a limited term version of a customary Hunde land contract) but others were mutolo (a more or less permanent version of such a contract). This was very long ago now. It is difficult to know now which were temporary contracts and which were permanent*

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<sup>153</sup> The massive immigration wave of an estimated 1.5 million largely Hutu populations from Rwanda into North and South Kivu in 1994 materialized in a completely different political environment from the earlier immigration waves: in 1994, the land tenure situation was already highly problematic, communal conflict fault lines were already well-established and a large-scale integration of the newcomers into the customary systems was for many reasons unthinkable.

*ones. And it doesn't even really matter today anymore. Even if we knew, you can't chase people away after one or two generations. It wouldn't be possible anyways. And we should not make that a problem. The problem is not so much the people that came between the 1930s and early 1970s. The problem is those that came in 1994 and thereafter and those that are not willing to pay the fees for the land and that pretend that it is theirs ...*" (Series 1.1.2 interview, Goma, 2012).

However, the customary leader also acknowledged that:

*"The question of the duration of the land contracts with the Rwandan immigrants was an issue in the early 1960s. It is in part because many of our land contracts with the Rwandans were temporary ones. The Kanyarwanda war was about the creation and delimitation of North Kivu province but it was also about the duration and validity of the customary contracts with the Rwandans and about their refusal to pay our fees. When some of our notables attempted to recuperate some of the lands they had given out, the Hutu refused to leave saying that they had improved the land and built their huts. And it is true that sometimes it was even them that had cleared the forests. In many cases they had no right to install themselves permanently. But once installed with a full homestead and a family it is difficult to ask people to leave..."* (Series 1.1.2 interview, Goma, 2012).

In reviewing eyewitness testimonies (series 1.1.2, 1.1.3 and 2.3.7 interviews in Goma and Masisi, 2012 and 2013) and more or less recent and present-day analyses (see e.g. Bucialimwe-Mararo, 1990 and 2013 and Willame, 1997) the large number of disputes over the land of *rwandophones* soon opposed the Hutu and Tutsi populations on the one side to chiefly the Hunde and secondarily Nyanga, Nande and Tembo populations on the other and they directly contributed to the so-called *Kanyarwanda Wars* of the early and mid 1960s, as well as later also to the so-called *Masisi Wars* of the early 1990s (see also Willame, 1997). And despite the fact that there appear to be only very few recent examples of tenure disputes that fit into this category, the historical scale of the immigration and land transfer events that took place between the mid 1930s and mid 1990s continues to drive inter-communal tensions throughout the four southern territories of North Kivu until this very day. And in fact, the questionnaire survey and my interviews indicate that many thousands of the ongoing customary contract legitimacy disputes in Masisi and Rutshuru trace their roots to the

customary contracts entered several decades ago between Hunde nobilities and immigrant members of the Hutu and Tutsi communities<sup>154</sup>.

A final, noteworthy element of this type of contract legitimacy disputes (that is, at least partially ultimately linked to conflicting, oftentimes socio-culturally defined interpretations of land rights and land rights contracts) is that in many cases, these disputes are linked to tenure disputes over customary contract fees (*redevances*)<sup>155</sup>. According to my interviews held with senior members of the Hunde and Nyanga customary authorities during the fieldwork periods of 2006, 2012, 2013 and 2014, the so-called *Kanyarwanda Wars* of the 1960s, the *Masisi Wars* of the early 1990s and, more recently, several smaller scale inter-communal conflicts have been fought not only over the legitimacy of customary contracts between members of different ethnic or ethno-tribal communities, but also over a longstanding and continuously growing refusal of members of mostly the Hutu community, and in some cases the Tutsi and Nande communities to pay customary land fees (*redevances*) to the authorities of the Hunde and Nyanga chiefdoms in Rutshuru, Masisi and Walikale. For example, a member of the Hunde customary authority pointed out:

*“Very many if not most of the Hutu peasants no longer pay customary fees in Masisi, and I have heard that the same counts for Bwito and eastern Walikale. They simply argue that all land in the Congo belongs to the state and therefore to all of its citizens. Who can force them to pay? The state says it is not concerned because these are customary lands. But the state wants us to administer the lands, the groupements, the chefferies. If the Hutu cultivated state lands, they would pay taxes. We (the customary authorities) have some influence in our own community, but the Hutu are now the majority in many places of Masisi and all over Rutshuru. They do what they want. And we can’t do anything...”* (Series 1.1.2 interview, Masisi, 2012).

A second subtype of contract legitimacy disputes in the customary land domain with far-reaching conflict propagation potential lies in contract legitimacy disputes that resulted from customary succession disputes. Contract legitimacy disputes linked to customary

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<sup>154</sup> In fact, the legitimacy of customary land tenure contracts between immigrant Hutu and Tutsi populations (and their successor generations) and Hunde nobilities constituted a central topic in the negotiations that followed the inter-communal conflicts of the early 1990s (see e.g. GEAD, 1993) and it remained a very present and highly controversial topic in some of the post conflict mediations that I attended in Masisi in 2006.

<sup>155</sup> Disputes and conflicts over customary fee (*redevance*) and tax payments will be discussed in some detail in the following subsection.

succession disputes are sometimes interlinked with dozens, hundreds or, in rare cases even thousands of other cases of the same or similar types. The rationale behind this type of disputes lies in the fact that the legitimacy of any customary contract rests on the lineage-based legitimacy of the customary authority that represents the patron in the customary patron - client relationships with regards to farmland. If a customary nobility representative fills the position illegitimately, all the land related contracts that have been entered under his administration can ultimately also be deemed illegitimate. This does not necessarily mean that customary succession disputes necessarily lead to large-scale follow-up contract legitimacy disputes and conflicts. In fact, it appears that large-scale follow-up conflicts are rare; nevertheless, the risk for this to happen is real, documented in the literature (see e.g. Bouvy, 2015) and it was related on several occasions in my interviews with members of interviewee groups 1.1.2 and 1.1.6.

A third important subtype of contract legitimacy conflict in the customary land domain relates to the large-scale population displacements that occurred on numerous occasions throughout the last twenty-five years in North Kivu. In this context, it appears expedient to highlight that a UN Panel of Experts Report (UNSC, 2002) estimated the share of people that have experienced violent conflict-induced forced displacement at around 80 percent of the entire population of North Kivu. Most of these forced displacements were of relatively short duration. However, there were still an estimated over 800,000 internally displaced people (IDPs) in North Kivu in early 2017 (NRC, 2017); and several hundred thousand IDPs have more or less permanently settled in new locations while several ten thousands are still seeking resettlement in the territory of Masisi alone (series 1.4.1 interview, Goma, 2014). The displaced people have by and large left behind farmlands and most of these temporarily abandoned farmlands were relatively quickly reoccupied by others in the context of urgent land shortage. Whereas the so-called *Pinheiro Principles* (UNHCR, 2005 and Leckie, 2005) require that land be restituted to displaced persons upon their return, this maxim is far from feasible in many situations where the return of refugees and IDPs is politically as charged as it is in North Kivu. And what is more, in many cases, neither Congolese law nor tribal land tenure customs favor the return of displaced peoples, as the following paragraphs will highlight (see also Sylla, 2011).

An important contract legitimacy dispute-related factor that comes to play when for any given reason people leave the land that they had settled is that most of the land-administering ethno-tribal communities of North Kivu (including the four major groups Nande, Hutu, Hunde and Nyanga) apply customary analogs to acquisitive prescription rights (*civil code*) or adverse possession rights (*common law*) to customary land plots. These acquisitive prescription right analogs differ not only from the DRC's formal acquisitive prescription rights, but they also differ between the ethnic communities, and even between tribes within the same ethnic communities and in some cases, ultimately also between the clans of individual tribes (series 1.1.2, 1.1.6 and 2.3.4 series interviews, Goma, Masisi, Rutshuru and Beni, 2012, 2013 and 2014). Acquisitive prescription means that new occupants can claim certain types of ownership rights to a land after a pre-set period of time<sup>156</sup>. Customary prescription practices also imply that farmer families that leave their customary land possessions for any reason (such as forced displacement) for a certain number of years also lose their customary rights to the latter<sup>157</sup>. According to my series 1.1.2, 1.1.6 and 2.3.4 interviews held in Goma and North Kivu's rural villages, thousands of households are affected by customary prescription in the Masisi and Rutshuru territories alone and many of these cases are subject to contract legitimacy-related land disputes and conflicts.

As highlighted in the study area Chapter 6 on land rights in North Kivu and the DRC, formal land ownership is difficult to achieve for small farmers in the DRC due to several technical, financial and administrative obstacles. Nevertheless, formal ownership rights are very much sought after by those that can afford the administrative and financial costs involved (see also Mastaki, 2004 and Mastaki and Vake, 2009)). But as also highlighted in Chapter 6,

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<sup>156</sup> Whereas in the customary context of the dominant agrarian communities of North Kivu, no person can explicitly claim a land that he occupies (based on the effective occupation), customary authorities oftentimes reassign to neighbours or newcomers the holdings of families, which had fled violent conflict for a significant amount of time and accept these new occupants as their new customary land clients. Newcomers are oftentimes newly arrived people that have been forcefully displaced themselves (IDPs) from other regions of North Kivu, the DRC or sometimes even from neighbouring countries (series 1.1.6, 2.1.1 and 2.1.6, Goma and Masisi, 2012 and 2013).

<sup>157</sup> According to interviews I held with customary authorities of the Hutu, Nyanga, Hunde and Nande communities (series 1.1.2 and 2.1.5 interviews, Goma, Masisi, Rutshuru and Beni, 2012), customary *prescription* periods range mostly from 5 to 10 years, but shorter or longer periods can also apply under certain conditions depending on the ethno-tribal community, the clan and the type of land rights held.



even formal land ownership in the DRC is much less robust than in most Western countries. This is primarily due to a hierarchical structure of land rights that prescribes a long list of conditions to the upkeep of lower-order private property rights such as the *emphytéose* and the *superficie*, and secondarily also to prescription clauses in the formal land code that are applicable to all, including the highest levels of land rights, i.e. the *concession ordinaire* and the *concession perpétuelle* (see the DRC's Land Code 73-021).

Firstly, holders of *emphytéose* and *superficie* rights lose these to the issuing central state authority without compensation if the ongoing maintenance and exploitation conditions are not met. An important factor of these conditions is normally ongoing cultivation and exploitation. If a tract of land that underlies *emphytéose* or *superficie* status is not cultivated, the relevant land authority is held to expropriate the holder of his land rights and reissue *emphytéose* or *superficie* ownership rights to a new client or to redeem them for the state (articles 109 to 122, Land Code 73-021).

According to series 1.1.1 interviews I held in Goma and rural villages of Masisi and Rutshuru, many of the *emphytéose*, *superficie* and lower-ranked land rights holders have simply lost their rights after fleeing the violence in their villages. Thus, one farmer from Masisi stated:

*“My family and I were forced to flee our land in Masisi after the Interahamwe arrived in Kivu. We have all the papers to our land. We did not have a permanent concession but an emphyteose that will expire in 2015. The authorities in Masisi are saying that we have abandoned the land instead of cultivating and ameliorating it. But how could we have cultivated the land if we were forced to flee? Locals from the Hunde community are living there now and they don't want us back. Several of my friends and former neighbours are in the same situation: For many the contract terms have already expired and mine will expire in three years from now. I am afraid that we will just lose our lands. It makes me angry and sometimes I think we should take it by force...”* (Series 2.1.1 interview, Goma, 2012).

The previous example was quoted from an interviewee that could not exercise his emphyteosis rights and was in danger of entirely losing the latter by contract expiry. But the insecurity of land rights also affects the highest formal ownership rights categories: As highlighted in the study area Chapter 6 section on land rights, even the DRC's most robust formal land rights underlie extinctive and acquisitive prescription clauses. Extinctive

prescription implies expropriation by the state to compensate the state for unpaid taxes or fees. By contrast, acquisitive prescription rights can be claimed by a new occupant after ten years of effective occupation (see the Land Code 73-021). Given that several million people have been displaced in North Kivu over the course of the past twenty-five years, that hundreds of thousands have been displaced simultaneously over extended periods of time and that at least tens of thousands have not regained their farms and villages after more than a decade of displacement<sup>158</sup>, it appears almost intuitive that conflicts over contract legitimacy and land rights expiries (including acquisitive and extinctive prescriptions) are likely to abound.

And indeed, interviews I held with a representative of the *tribunal des grandes instances* in Goma (2006 and 2012) as well as with a representative of Rutshuru's land registry's *bureau des cas litigieux* (2012 and 2013) indicated that between all the legal institutions of North Kivu there are thousands of cases pending in which the legitimacy of existing land rights contracts is contested based on alleged contract expiries (in the case of emphyteoses and lower-ranking land rights), and hundreds in which legitimacy is disputed based on acquisitive or extinctive prescription (in the case of permanent concessions). Given that acquisitive prescriptions affect only perpetual concessions (which are typically only held for relatively large landholdings in North Kivu), the total number of disputes and conflicts over acquisitive prescriptions is comparably low. However, given the large size of most concession lands in North Kivu, prescription-related conflicts inherently tend to involve large stakes and powerful stakeholder groups. Hence, conflicts that involve acquisitive prescription at this level bear a significant amount of conflict propagation and ultimately also violence potential.

Furthermore, the overall size of land litigations as part of the courts' entire adjudication portfolio is immense: Tull (2005) reported from his fieldwork in the early 2000s that over 90 percent of the litigations at the Court of First Instance (*Tribunal des Grandes Instances*) in

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<sup>158</sup> These very rough numbers are based on estimates by interviewed UNHCR personnel in North Kivu and Rwanda, 2006 and 2012. See also Willame, 1997; Tull, 2005 and Prunier, 2008 for estimates on displaced Tutsi from Masisi that have, according to local sources, by and large not yet returned; see also Pottek et al, 2016 and the first of four case studies at the end of this first discussion subsection for a brief discussion of the forced displacement of Tutsi from Masisi during the early 1990s.

Goma considered land issues. My own interviews with court personnel in 2006 largely corroborated these numbers. And more recently, interviewed legal personnel in Goma stated:

*“There are hundreds of thousands of people in North Kivu that had been forcefully displaced just to see their lands occupied by others upon return. Wherever newcomers have been installed for years, it is almost impossible to force them to leave and to re-install the original owners. That is why we have the acquisitive prescription rights so that newcomers can begin to invest into their new farms, fields and residences after a certain amount of time. Actually formal law and many customs are quite similar in this approach. But one key problem is that like all laws, acquisitive prescription lends itself to abuse: your neighbors can attack you, chase you off your land, occupy your land, scare you and force you to stay away for ten years and then claim the land as theirs. Nobody is allowed to chase you off of your land, but once you are gone for ten years, it is fully legal to claim your land. This is unlikely to happen in times of peace, but I am afraid that during communal conflicts and in times of war it can be part of economic and political wartime strategies. In any case, we have hundreds such litigations over land and we have thousands of other types of land litigations. All in all, land tenure litigations represent close to 90 percent of the court’s activities. And that counts for the Court of First Instance (Tribunal de Grande Instance) as well as for the Court of Appeal (Cour d’Appel). And I am sure that counts even more for customary courts that do pretty much nothing else than land...”* (Series 1.1.5 interviews, Goma, 2012).

Like already highlighted by the quoted interviewee from Goma, my fieldwork suggests that legal expropriations via *emphyteosis* contract expiries, extinctive and acquisitive prescriptions constitute both a tool to deal with the vagaries of conflict, violence and displacement where they provide a legal frame to resettle long-term vacated lands. But they can also be used as a tool to appropriate lands of the victims of disaster. And what is more, they can actually set economic incentives for violence as the lands of violence victims can be legally appropriated. Certainly, there exist international standards to prevent this from happening (see e.g. the *Pinheiro Principles* (UNHCR, 2005) that call for the restitution of property for forcefully displaced refugees and IDPs), but in the real-life scenario of an unpeaceful (violent) post-conflict zone, which North Kivu continues to be, the practical applicability of such international standards appears limited.

A final prominent subtype of contract legitimacy related disputes and conflicts that touched both the customary and state domains simultaneously is linked to the process of transferring land rights between the customary, state and private land domains. This process is

called *domanialisation* and is described in the land code 73-021 of 1973. Hereby, the *domanialisation* involves a private applicant, the office holder of the DRC's land registry as well as the relevant customary authority of the land to be transferred into private ownership<sup>159</sup>. In operational terms, the process involves an official application by the private acquirer, a report by the customary land authority stating that the land is not exploited in a permanent contract relation with a customary client (as described in articles 193 to 203 of the land code 73-021), the payment of a fee and the endorsement and final transfer by the state authority. The land law provides a 2-year period in which *domanialisation* transfers can be contested and theoretically also reversed by customary rights claimants.

Interviewed sources of the land registries in Masisi and Goma (2012) as well as peasant farmer representatives (2006 and 2012), a member of customary authority (2012) and a large landholder have concordantly underlined that contract legitimacy disputes over contested *domanialisations* were very common just after the promulgation of the land law of 1973 until the mid 1980s. For example a customary authority member stated:

*“There was political pressure and we could also earn good money by selling unoccupied lands; we were young, we did not know how little land we really had and what it was worth. The amount of land I sold is negligible if you look at all the land we lost through expropriations and fraud, but politically it was and still is problematic because now my community is short of land. We have no more land to spare and to give to young families. And you know how many young families there are. They are desperate and they want a solution. And many are looking for those to blame”* (Series 1.1.2 interview, Goma, 2012).

And more or less congruent with the statement above, a landholder stated:

*“Many of the large and small landholders acquired land from the customary authorities in the 1970s and so did I. There was nothing wrong with that at the time. What would you do if you were a farmer and had a family to feed: your job is to be profitable and this requires a good amount of land. When there was well-priced land available on the market, I bought. Certainly, I was politically aware and by the late 1970s I knew what was going on. A few local landholders, as well as several*

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<sup>159</sup> As highlighted in the study area Chapter 6 on property rights in the DRC, the state owns all surface and subsurface resources including all land and water bodies. However, it is also highlighted that a substantial amount of property rights can be transferred by the state to private rights holders. When referring to *private land ownership*, this thesis refers to these privately tenable ownership rights.

*investors mostly from Kinshasa, Rwanda and Uganda bought occupied customary lands in North Kivu and had the peasant farmers evicted. Those were just a few black sheep of which most were deeply in bed with the Mobutu administration. But the land tracts involved were oftentimes large and the transactions did a lot of damage. But I and most other landholders from North Kivu, we did the due diligence procedures together with the chiefs and the local populations as prescribed by the land code. We did not buy land that was occupied by peasant farmers. Wherever chiefs sold occupied land to government cronies, all were guilty: the buyers, the chiefs and the land registry agents. But where chiefs sold vacant land without sharing the money with the community or where chiefs sold vacant land that the community had already predestined for other future purposes, we could not know. In these cases the fault lies clearly and exclusively with the communities' own chiefs and of course also with the state agents that enabled the transfers. And, what I also want you to take home here is that in the 1990s and 2000s none of the long-established Tutsi landholders from Goma cooperated with the RCD to repeat the domanialisation wave of the 1970s. After what happened throughout the 1990s, domanialising large tracts of customary lands and turning them into commercial plantations or pastures without the cooperation of the communities amounts to suicide unless one has an administration and an army for back up. We live here, we are part of the community; our families and we are vulnerable, we don't want to live in fortresses or have our families murdered"* (Series 1.1.3 interview, Goma, 2012).

Hence, the interviewed landholder discussed two distinct "waves" of *domanialisations*. The first immediately followed the promulgation of the new land code 73-021 in 1973 and lasted until the late 1970s and early 1980s and the second, though much smaller and more short-lived, took place during the military rein of the RCD-Goma between 1998 and 2002. During the first period, large swathes of customary lands mainly in Masisi and Rutshuru, but also throughout the rest of North Kivu were transferred to private owners<sup>160</sup>. This first domanialisation wave remains the keystone of much social controversy in North Kivu. But although much more limited in size, the second wave is so controversial that many

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<sup>160</sup> Unfortunately, there exist no statistics or official databases on the numbers or rates of *domanialisation* and privatization of customary lands during this period. Nevertheless, series 1.1.1, 1.1.2, 1.1.3, 1.1.4, 1.1.5 and 1.1.6 interviewees consistently underlined that both legitimate and fraudulent *domanialisations* affected tens of thousands of peasant farmers in the Masisi and Rutshuru territories between 1973 and the early 1980s (see also Nawezi et al., 1981 and Bucialimwe-Mararo, 2001) and much smaller, but nevertheless important numbers of peasant farmers were once again affected by domanialisations during the AFDL and RCD rebellions and the immediate post-conflict years).

interviewees from the public administration outright reject to discuss it. And one of the few that were willing to discuss the matter explained the reticence of his colleagues:

*“...many of the domanialisation transfers between the late 1990s and mid 2000s happened by force. And many of those that profited still wage a lot of power in North Kivu. They have mostly lost their political posts, but many have close contacts to some of the militias and others are thought to control structures in the military.”*  
(interview series 1.1.1, 2012).

It is part of documented history that during the civil conflicts that began in the mid 1990s and ended in the early 2000s many customary authorities of the four southern territories of North Kivu were either deposed, exiled or in some cases executed, allegedly mostly on behalf of rebel state authorities, and thereafter replaced by selected family members that were willing to cooperate with the agendas of the (rebel) state authorities in place (see .g. Tull, 2005). According to series 1.1.1, 1.1.2 and 1.1.6 interviews (2006, 2012 and 2013) the political relations between the rebel state authorities and the *replacement* customary authorities were used to initiate a renewed wave of customary land domanialisations. And much of this newly domanialised land was ultimately assigned to senior members, supporters or cronies of the rebel state. In some cases the state authorities instrumentalised existing succession disputes within or between customary clans to their advantage, whereas in others such disputes were only provoked via the deposition, exile or execution of customary authorities.

The regional scale of these events is highlighted by the fact that, according to series 1.1.2 and 1.3.1 interviews with customary and state authority members (2006 and 2012), all top and mid-level customary authorities from the Bashali-Kaembe *chefferie* were replaced by RCD-Goma candidates during the RCD rebellion. And many of these served as a tool for the rebel state elites to *domanialise* lands out of the customary domains. Many of these “*second wave domanialisations*” remain intensely contested although the legal contestation periods have long expired. Similarly, according to series 1.1.2 and 1.1.4 interviews with customary authority members and peasant farmer representatives in Goma, Masisi and Rutshuru (2006, 2012 and 2014) the conflict and post-conflict era replacements of customary authorities have triggered numerous customary succession disputes of which some prominent cases remain

unresolved until this very day<sup>161</sup>. Given that the legal contestation period for illegitimate *domanialisation* cases has long expired, much of the contestation is occurring outside of the legal adjudication frameworks. Several examples of this subtype of legitimacy conflicts have a very high violence potential. This is particularly the case where those that have profited from the *domanialisation* are senior representatives of one of the combatant parties of the most recent civil wars. This is because these oftentimes continue to dispose of important connections within the DRC's political administration, its military, or to any one of the many armed militias or other informal, non-state armed groups (NSAGs) that continue to roam large parts of North Kivu and parts of the adjacent provinces.

The discussion of disputes and conflicts over contract legitimacies in the formal-legal domain requires a final mentioning of a sub-type of disputes and conflicts that has been related to me on one individual interview occasion by a recently affected stakeholder, but that has, most notably, also erupted at an extremely large-scale collective level on at least one occasion in more or less recent history when it played a crucial and direct role in the outbreaks of both the AFDL and RCD-Goma rebellions (see e.g. Willame (1997), Ruhimbika (2001), Tull (2005), Prunier (2008) and Stearns (2013)) that ultimately developed into the two regional

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<sup>161</sup> A prominent example is a feud between two families of the Kalinda Hunde clan over the *mwami* position for the *Bahunde chefferie*. The feud opposed the family of Ngandu Kalinda who had been forced into exile by the AFDL and later the RCD-Goma administration starting in 1997. In his absence, Ngandu's half-brother, Nicolas Kalinda became interim chief. Thereby the Kalinda clan of the Bahunde chefferie suffered a similar fate as the Bashali clan of the Bashali chefferie, of which Mwami Sylvestre Bashali was exiled and replaced by a series of RCD puppets. But whereas in the Bashali case the RCD puppets disposed of little legitimacy vis-à-vis their customary clients and the remaining customary Hunde hierarchy and were therefore forced to swiftly render their positions just before or after the RCD was voted out of office at the end of the post-war transition in 2006, this was not the case for Nicolas Kalinda who continued to exert substantial influence and succeeded at maintaining his post until today despite his history of cooperation with the RCD administration. Hence, Mwami Nicolas Kalinda remains in office and the dispute between the Kalinda families remains unresolved. Whereas the Kalinda succession case was largely negotiated peacefully between the involved families, other examples from the post-war decade were contested violently (see e.g. Bouvy, 2015). In the now long-resolved Bashali case, violence was very much a means of contention. According to several interviewees (series 1.1.2, 1.2.1 and 1.3.1, Goma and Masisi, 2012 and 2014) the RCD replacement customary authorities were oftentimes attacked, and some were, in deed, killed by Mayi-Mayi militia (see also Tull, 2005). This type of violence largely abated when most of the pre-RCD customary authorities returned to their posts in 2006 and 2007. Nevertheless, an interviewed member of the Hunde authority indicated that "*the conflicts over the customary positions during the RCD period left deep scars not only in the inter-communal relations between the Hunde and the rwandophones, but also in the relations between the few but influential Hunde that cooperated with the RCD administration and the large majority that did not. And ultimately, it also left deep scars in the popular legitimacy of customary authority*" (Series 1.1.2 interview, 2012).

wars that jointly became to be known as *Africa's First World War* (see the title of Prunier's, (2008) renowned work on the AFDL and RCD wars).

As highlighted in the study area Chapter 6, the most secure bundle of formal land rights in the DRC is comprised in a so-called *concession perpétuelle*. Perpetual land concession holders can only be deprived of their property rights by *eminent domain*, *escheat* and *extinctive* or *acquisitive prescription*. The second most secure bundle of property rights is comprised in the so-called *concession ordinaire*. Holders of these *ordinary* concessions enjoy the same rights as the holders of *perpetual* concessions, except that ordinary concessions must be renewed every 25 years. Citizens of all countries of the international state system and all Congolese residents can acquire *ordinary* concessions of 25-year durations for eligible land. However, only Congolese citizens are qualified to acquire *perpetual* concessions.

As briefly highlighted in the conceptual discussion in Chapter 2, it is important to note that the legislative framework that defines citizenship in the Congo has been substantially modified on repeated occasions during the 57 years that followed the country's independence such that entire communities have repeatedly, collectively gained or lost their entitlement to citizenship<sup>162</sup>. For those that possessed permanent concessions to land in the Congo, the loss of citizenship also meant the loss of their permanent concession; and in many cases, it ultimately meant the outright loss of all property rights to the land that they occupied and exploited.

The most radical and consequential acts of citizenship redefinition were undertaken within the relatively short time frame of less than one decade by the former Congo-Zairian president Joseph Désiré Mobutu Sese Seko who initially accorded via the law 72-002 of 1972 citizenship in a blanket fashion to all residents of the DRC. This explicitly included the residents of the Kivu region that had immigrated from Rwanda and Burundi in the frame of the colonial state-orchestrated *Mission d'Immigration des Banyarwanda* (MIB) and those that had followed as refugees in the wake of the so-called *Révolution Sociale* and the ethnic

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<sup>162</sup> See also the conceptual discussions on ethnicity and citizenship in Subchapters 2.3, 2.4 and 2.5.



violence against Tutsi populations triggered by the *Révolution Sociale* in late colonial and early postcolonial Rwanda.

There is a quasi-consensus in the more or less recent political analysis literature of the early postcolonial period (see e.g. Willame, 1997; Diangitukwa, 2001; Tull, 2005; Prunier, 2008 and Lemarchand, 2009) that the rwandophone immigrants had temporarily filled a key position within the neo-patrimonial networks that served the Mobutu administration to extend its rule into the rural countryside of North Kivu during the years of state consolidation that followed the Congo Crisis in the 1960s. But in an act of recycling these structures and ridding the Congolese administration of the increasingly powerful rwandophone networks around the director of the presidential office, Barthélémy Bisengimana, the Mobutu administration radically deconstructed his former (rwandophone) allies and, in the most indiscriminate fashion simultaneously also their entire community by formally undermining their citizenship status via the promulgation of the law 81-002 of 1981. The latter effectively cancelled the citizenship rights of Kivu's Tutsi populations as well as, depending on the interpretation of the law<sup>163</sup>, also those of most of the Hutu populations outside of the Bwisha chefferie in a similarly blanket fashion as the hereby abrogated law 72-002 had accorded only nine years prior (see also the discussion on Congolese citizenship legislation in the conceptual discussion Chapter 2).

The radical redefinition of the citizenship legislation initially generated very little impact on the socioeconomic and political realities of the Kivu region because the Congolese authorities did not execute the law at any large, or community-wide collective scale. However,

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<sup>163</sup> As briefly outlined in the conceptual discussion Chapter 2, the law 81-002 defined as Congolese citizens by birth all and exclusively those that belonged to an ethnic group that was installed on Congolese territory in the year of 1885. The modalities of this "installation" or "establishment" are not further defined in the law; but there is a Congolese practise to define as "installation" or "establishment" the existence of a chiefdom on Congolese territory. There is little controversy over the fact that the Hutu disposed of one or several chiefdoms inside today's Bwisha territory, which would have legitimised Hutu Congolese citizenship at least for the members of the Bwisha community. The Tutsi appear to have disposed of a chiefdom in Jomba, but there exist less records of the latter and in the political context of the time (the early 1980s until the late 1990s), it was primarily the quasi-entirety of the Tutsi communities of North and South Kivu that were menaced by expropriation and expulsion. Citizenship remains defined in very unclear, ambiguous, and controversial terms today and the citizenship controversy over the Tutsi community as well as that over some of the Hutu and a small number of other communities in the DRC remains, although latently, very present (see also the Subchapters 7.2.5 and 7.2.6 for a further discussion).

in 1995 the Congo-Zairian transitional parliament, i.e. the *Haute Conseil de la République – Parlement de Transition* (HCR-PT) voted a resolution that called for the immediate repatriation of all Kinyarwanda and Kirundi-speaking people that could not prove their ancestor's establishment within the territorial confines of the Belgian Congo in the benchmark year of the Berlin Conference in 1885. Given the weak documentation culture for non-Europeans in the Belgian Congo and its post-colonial successor states this proof would have been extremely difficult to provide for the very large majority of rwandophone and kirundiphone<sup>164</sup> populations in the Congo, including for those whose ancestors had been established in North or South Kivu at the benchmark date of 1885.

The resolution also called for the confiscation of the affected populations' real estate assets (*Résolution sur la nationalité du 28 avril 1995*, articles 3 and 4, quoted in Willame, 1997, pp. 89-90). Hence, as of April 28<sup>th</sup> 1995, the large majority of rwandophones and kirundiphones mostly of North and South Kivu's Tutsi communities were immediately threatened by expropriation and expulsion.

According to interviewed members of North and South Kivu's Tutsi communities that had either participated in or eye-witnessed the ensuing rebellions (and also according to quasi-consensual assessments by relevant authors including Willame(1997), Ruhimbika (2001), Tull (2005), Prunier (2008), Lemarchand (2009) and Stearns (2013)) the henceforth looming losses of citizenship status and property rights drove thousands of members of the threatened Tutsi

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<sup>164</sup> The kirundiphone populations of the DRC belong, like the rwandophones to one of the three following ethnic communities: the Hutu, the Tutsi and the Twa. According to the most frequently quoted estimates (see e.g. Willame (1997) and Tull (2005)) roughly 85% of the rwandophone and kirundiphone populations of the African Great Lakes region belong to the Hutu community, roughly 14% to the Tutsi community and roughly 1% to the Twa (Mbute) community. Based on rough estimates from North and South Kivu and more authoritative estimates from Rwanda and Burundi (see e.g. CIA, 2017), there are between 25 and 30 million speakers of Kinyarwanda and Kirundi in the African Great Lakes region. Kinyarwanda and Kirundi are widely mutually intelligible languages. The kirundiphones reside primarily in Burundi and South Kivu, as well as, to a lesser extent in northwestern Tanzania whereas the rwandophones reside primarily in Rwanda and North Kivu, as well as, to a lesser extent in South Kivu, southern Uganda and northwestern Tanzania (see Willame (1997), Van der Meeren (1996), Waters (2001) and Tull (2005)).

communities<sup>165</sup> of North and South Kivu to foment rebellions in early 1996 that ultimately melted into the AFDL rebellion and the ensuing wars of 1996/1997 and 1998/2003.

The immediate situation regarding the citizenship issue of North and South Kivu's rwandophone populations has substantially improved with the promulgation of a new citizenship law as part of the DRC's most recent Constitution of 2006<sup>166</sup>. Nevertheless, as highlighted in the conceptual discussion in Chapter 2, the citizenship status of North and South Kivu's rwandophone (and kirundiphone<sup>167</sup>) populations is far from fully resolved. And what is more, given the Congolese land law's discrimination between citizen and non-citizen property rights in land and other real estate, Congolese (resident) permanent concession-holders of unresolved citizenship status remain exposed to at least a latent threat of expropriation. And given the ambiguity of the law, the looming threat at least bears the potential to be instrumentalized for economic or political gains at the hand of certain economic and political power-holders and opinion-leaders.

In this wider context, a number of interviewees from the rwandophone (Hutu and Tutsi) communities have related their fears that the latent threat of expropriation may one day re-become concrete as it already has in the past. Thus, one interviewed Tutsi that had fled his native village in Masisi in the wake of the ethnicist violence that emanated from the MRND, ex-FAR and Interahamwe-run refugee camps along the DRC's Rwandan border during the mid 1990s and that had now, after a long sojourn in Rwandan refugee camps and several years of entrepreneurial life in Gisenyi (Rwanda) and Goma, recently reacquired his parental farm in the village in Masisi, described his experience of reintegrating the rural farming community and preparing to become a permanent concession-holder:

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<sup>165</sup> Due to the widely, and through the establishment of a politico-administrative chieftaincy subunit also officially, recognized presence of the Bwisha Hutu community within the present confines of the DRC, the Hutu populations living in the Bwisha commune are mostly regarded as legitimate Congolese citizens. By contrast, given that the Tutsi disposed of no unambiguously proven historically established chieftaincy in the DRC, all but the small number of formally (as Congo-Zairian citizens) naturalized members of the Tutsi community were threatened by expropriation and expulsion..

<sup>166</sup> For a discussion of the currently valid citizenship legislation as laid out in the 2006 Constitution, please see the conceptual discussion Chapter 2 as well as the following discussion Chapter 7.

<sup>167</sup> Given that this thesis is primarily occupied with the conflict events in the province of North Kivu in which kirundiphone populations are largely absent, the thesis will mostly refer to *rwandophones* only in the context of the citizenship debate.

*“Shortly after the acquisition of the emphyteotic lease to the land I discovered that locals and land registry officials were contesting my citizenship status and therefore my right to convert the emphyteotic lease on my land into a permanent concession. I have the feeling that they want the land that I have paid for back for themselves. It appears impossible to resolve. The land registry is contesting my citizenship as long as I do not furnish a proof of the latter. But I will not be issued a proof of citizenship as long as I cannot prove my roots in the Congo. For this, I require testimonies from my village and groupement of origin, where I just bought the land. But the community does not want me; they say I am a Rwandan immigrant. There is a real likelihood that I will lose the land at the end of the emphyteosis period. Or even before that if the villagers prevent my return and I cannot meet the emphyteosis conditionalities...”* (Series 2.4 interview, Goma 2012)<sup>168</sup>.

A contextually very different but conceptually similar representation was related to me by an interviewed landholder from Masisi who testified that a family member had been obstructed to convert his emphyteosis, of which the 25-year expiry period was running out within a few years into a concession because the land registry had required a proof of citizenship that he had not been able to provide. The interviewee related:

*“The refusal to convert the concession was politically motivated because the land had been family property for decades; the land was cultivated, the fees were paid and there was no legitimate reason to deny the conversion. My ... (family member) is known to be in opposition to the central and provincial governments and there are people in the administration that want to quiet him. And there are others that want his land...”* (Series 1.1.3 interview, Goma, 2012).

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<sup>168</sup> In this context it appears expedient to recall that firstly, non-citizens can acquire emphyteotic leases, but they are of temporary nature. They can only be converted to permanent concessions if the rights holder is a Congolese citizen (see study area Chapter 6). Secondly, the very large majority of Congolese residents do not own passports or other authoritative citizenship documents. Instead, they own election cards. These election cards allow registering as a voter for elections and they are mostly (informally) accepted as proof of citizenship in day-to-day affairs, but they are not considered an actual proof of the latter. If a local office contests the validity of an electoral card the owner must provide a formal proof of citizenship. This proof is established based on the testimonies from local administrators. Wherever local administrators deny to submit a testimony stating that an applicant is, indeed *“a local resident born to local parents”* (this is a quote from an interviewee of group 2.1.3, 2012) it has been repeatedly related to me in interviews with members of North Kivu’s rwandophone community (series interviews 2.1.1 and 2.1.3 and 2.3.8 interviews in 2012 and 2014) that it is extremely difficult for an individual with a so-called *non-autochthonous* or *allochthonous* background (such as a member of the rwandophone community) to acquire an authoritative proof of citizenship. And as such, their status remains fragile; and that counts for both the collective status of rwandophones as a community and the individual status of each rwandophone resident of North Kivu.

Hence, both interviewees suspected that the citizenship issue and derived expropriation threats had been raised by members of the state administration either as a tool to exert pressure and align political opponents with a provincial or national political agenda, or, simply as a tool to effectively expropriate and redistribute land to members or proxies of the administration.

The first of the two cited cases remains unresolved, whereas the second case has been resolved in the meantime and the owner is in the process of acquiring a concession title for his land. Nonetheless the two cases point towards a type of conflict that bears, at least theoretically, enormous conflict propagation potential. This is because firstly, in opposing formal state agents and formal landholders as opponent stakeholders, the type involves inherently influential stakeholder groups that oftentimes dispose of the power to expand conflicts beyond their original dimensions. And secondly, the type not only disposes of inherent social identity fault line patterns; it is, indeed, effectively largely built on the latter.

The momentarily quiet, but ultimately unresolved citizenship question of North and South Kivu's rwandophone populations appears to be banned from the mainstream political discourses in the provincial and national capitals. But the above-quoted cases suggest that the controversy remains alive at a less visible level that, at least for the time being, affects targeted individuals instead of entire communities. But even if potential political interests to publicly reignite the citizenship controversies are harnessed for the time being, the above quotes illustrate that they remain alive and that they, indeed, continue to play a role at a very sensitive location; namely at the intersection between land, social identity, money and political power.

Given that the citizenship and land rights of rwandophone populations have constituted key elements of at least two major rebellions and wars of the last two decades, it appears palpable that disputes and conflicts that link the citizenship statuses of individual ethno-tribal communities to property rights dispose of an extremely high propagation potential. But even at the individual case level, the potential for conflict propagation and violence can be very high wherever the interests of powerful stakeholders, such as large concession-holders with connections to the DRC's or neighboring state's political or military administrations or to one or more of the larger NSAGs are affected in any significant way.

**Disputes and conflicts over land tax and customary fee payments** exist in both the formal land tenure and the customary tenure domains. As with most subtypes of contract legitimacy disputes, disputes over land tax or customary fees are mostly very small-scale disputes that are usually played at the individual household level. However, a certain subtype of conflict over land taxes or fees (*redevances*) in the customary land domain has a substantial propagation potential.

In the customary land administration systems of the province's dominant agrarian societies, i.e. the Hunde, Nande, Hutu and Nyanga communities, the members of the tribal or chiefdom communities communally hold land rights. However, in the traditions of all of these communities, it is the highest-placed customary leader, i.e. the *mwami* (which means *king* in (Congolese) Swahili, Kihunde, Kinande, Kinyarwanda, Kinyanga and many other regional Bantu languages; see Nkiko, 1980) that holds a quasi-absolute and permanent land administration authority. This authority rests first and foremost on the communities' customs, norms, traditions and traditional belief systems (see also Vlassenroot and Huggins (2005), Boshab (2007), Mastaki and Vake (2009) and Vyakuno (2009)).

According to my interviews with members of the Nande, Nyanga, Hunde and Hutu customary authorities in Beni, Goma, Masisi and Rutshuru and (2006, 2012 and 2014), all of these communities ultimately derive the legitimacy of their claims to land from divine provision: It is the communities' ancestors and their spirit guides and gods that provide the land to the community; and it is the community's divinely designated leaders that administer the land for the community. Whereas a secondary level of customary land rights stems from initial land clearance and first cultivation, the initial right to clear and cultivate must be bestowed and defined by the *mwami* and it ultimately derives from a rights delegation by a divine instance (see the discussion on customary land tenure forms in North Kivu and the basis of their legitimacy in the discussion Chapter 7.2 for more detail).

The metaphysical aspect of customary rule still has a role to play. Some of it appears to be primarily folkloric, but in many Nande communities, for example, it appears that conceptualizations of the divine still imprint the relations between the bami and large sections of their populations. Nevertheless, at present, the bamis' influence and power is formally derived from secular legitimacy; and this has been so for many decades.

In colonial, postcolonial and current formal legal practice, the mwami's legitimacy derives from his recognition as customary leader by the state authorities. The rights and responsibilities of the customary leaders are rather imprecisely defined in a series of laws and ordinances of which the land code 73-021, and the laws 80-008, 08-016 and 15-015 are currently the most relevant. According to the latter, all land belongs to the central state, but the customary domain lands are administered according to the local customs<sup>169</sup>. Customary domain lands are all those lands that are not defined as either state domain or private domain lands (see also the conceptual discussion Chapter 2 on land property and land rights), as well as the study area discussion Chapter 6 on land rights in the DRC) and, as highlighted earlier in the thesis, they comprise roughly 85 percent of all lands in North Kivu (Tull, 2005; Vlassenroot and Huggins, 2005) and even more in the DRC (Huggins et al, 2006). With regards to these lands, the ethno-tribal customs of the central state recognized tribes and chiefdoms are free to define the systems of land rights as long as these do not contravene state law (see Boshab's (2007) discussion of *contra legem*, *secundum legem* and *praeter legem* relations between tribal customs and state law).

As previously mentioned in this section, different types of customary land contracts exist within each of North Kivu's dominant agrarian communities (Nande, Hunde, Hutu and Nyanga). Most, if not all of these land contracts incorporate so-called *redevance* payment schedules in which land clients pay in varying combinations of kind (tree or field fruits, livestock such as goats or cattle, produce such as cheese, sorghum beer or fruit wine), cash or manual work services for the *usus* rights to customary land<sup>170</sup>. The *redevance* payments are

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<sup>169</sup> The type of customary land administration or the applicable customary rules are not further defined in Congolese law.

<sup>170</sup> These systems are mostly known by the names of their most common contract types: *mutolo* for the Hunde, *vusoki* for the Nande, *obukonde* for the Hutu, *ovusoki* for the Nyanga and *kalinzi* for the Shi, but as highlighted in earlier sections, each of North Kivu's agrarian communities has several different types of land contracts that are not easily described by any of the above cited titles. In fact, the use of these titles implies a choice of simplification that in itself bears the risk of misinterpreting and misconstruing existing customary land tenure contracts. For a better understanding of the existing customary contracts and their implications for North Kivu's land tenure systems and the conflicts that are rooted in these, there is a blatant need for additional research on the customary land tenure systems in North Kivu and elsewhere in the DRC. Such research would require an experienced research team that is well-versed not only in Swahili, but also in the ethnic languages and dialects of North Kivu as well as in both Congolese property law and local (customary) conceptualizations of land and other ownership rights.

typically made by each customary client via the immediately superior level of the chiefdoms' customary hierarchy until they ultimately reach the *mwami* at the pyramid's summit. According to my series 1.1.2 interviews (2012) held with senior members of the Hunde and Nyanga customary authorities, the so-called *Kanyarwanda Wars* of the 1960s, the *Masisi Wars* of the early 1990s and, more recently, several smaller scale inter-communal conflicts have been fought, amongst other reasons, not only over the legitimacy of customary contracts between members of different ethnic or ethno-tribal communities, but also over a growing refusal of members of mostly the Hutu community, but also in some cases the Tutsi and Nande communities to pay the customary land fees (*redevances*) to the customary authorities of the Hunde, Nyanga and Nande chiefdoms in Rutshuru, Masisi and Walikale territories (see also GEAD, 1993; Willame, 1997; Tull, 2005 and Bucialimwe-Mararo, 2013).

Hence, conflicts over customary land fee payments can be of any scale. Large-scale conflicts are oftentimes linked to conflicts over contract legitimacies and they normally oppose customary clients of one ethno-tribal community (such as the Hutu in a number of cited examples) to customary authorities of another (such as the Hunde or Nyanga in a number of cited examples). Given the relatively clear-cut ethno-tribal stakeholder patterns of this subtype of conflicts, the conflicts of this subtype dispose of a significant propagation potential along ethnic or ethno-tribal social identity fault lines.

**Land use disputes** opposed mostly cattle raisers and cultivators (farmer-herder conflicts), but in a very few surveyed cases also hunters and cultivators. Finally, in a very different constellation of land use conflicts, cultivators, cattle raisers, hunters and artisanal miners opposed environmental protection and other state agencies that were responsible for guarding national parks (the PNVi).

In most of the surveyed locations, land use disputes and conflicts played no significant role at all. However, in several locations they were very present. This was particularly the case in close proximity to the PNVi national park, where disputes and conflicts between park authorities and cultivators and/or cattle raisers, as well as hunters and miners abounded. Land use conflicts also abounded in several research locations with relatively high cattle raiser densities in the territory of Nyiragongo and in the eastern-most sections of Rutshuru (particularly around Bunagana) and individual spots dispersed throughout Masisi (particularly



around Ngungu and Kilorirwe). Key aspects of conflicts between cattle raisers and cultivators will be discussed in the following paragraphs whereas those between national park agents and adjacent populations will be discussed in the section on boundary disputes.

It is important to note that the farmer-herder conflicts of North Kivu have not much in common with those of the Sahel zone, the Horn of Africa and north-central Tanzania where roaming pastoralists clash with cultivators over the encroachment of mostly open-access pastures. In North Kivu, large open-access pastures such as those that can be found throughout wide parts of the continent's semi-arid regions have never existed in documented or verbally transmitted history. Indeed, the historical lack of large open-access pastures in North Kivu is more or less consistently highlighted in the relevant literature (see e.g. Willame, 1997 and Bucialimwe-Mararo, 2001).

In contrast, the hierarchically structured and by and large territorially defined<sup>171</sup>, mostly cultivating agrarian economy-based chiefdoms of the Nande, Hunde and Hutu communities of the fertile lake shores, floodplains, Mitumba and Virunga mountain ranges in North Kivu's eastern half had designated comparably small sections of their territorial domains to either or both sedentary, and transhumant cattle herding purposes. Some of these designated cattle-herding areas still exist (particularly in Nyiragongo, but also in eastern Rutshuru and parts of Masisi), but in many cases, they have long been subject to encroachment as population densities and resulting land pressures have risen rapidly over the past eighty years. This has led and continues to lead to disputes and conflicts between cattle herders (that are mostly of the Tutsi community) and cultivators (that are primarily of the Nande, Hunde, Hutu and Nyanga and secondarily also of the much smaller Tembo, Kumu, Kusu and Rega communities of North Kivu)<sup>172</sup>.

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<sup>171</sup> The territorial conceptualization of political power in North Kivu will be put into perspective and contextualized within larger Sub-Saharan conceptualizations of power and territorial control in Subchapter 7.2.2. In short, the agrarian chiefdoms of North Kivu appear to have had a territorial conceptualization of political power that was more or less precisely defined in the regions that were permanently occupied by the chiefdoms cultivating client populations. Political power was less territorially defined over the adjacent forest and pasturelands that underlay more sporadic control by the chiefdom's central authority.

<sup>172</sup> As highlighted in the study area Chapter 6 and the hypothesis results discussion Chapter 7, North Kivu's demographically most important Nande, Hutu, Hunde and Nyanga communities are in the very most part cultivators. This also counts for all other ethnic groups of North Kivu except for the Tutsi, the Efe, Kango, Asua

However, as pertinent literature (see e.g. Willame, 1997 and Bucialimwe-Mararo, 2001) and interviewed customary authorities from the Nande, Hunde, Hutu and Nyanga communities congruently highlight, the designated grazing lands of North Kivu's agrarian chiefdoms have always constituted comparably small parts of the province's cultural landscape. Large pastures only became dominant cultural landscape elements across Masisi and western Rutshuru, Nyiragongo and southern Lubero territories in the wake of the *zairianisation* period, i.e. in the process of the expropriation, nationalization and re-privatization<sup>173</sup> of former colonial (mostly) private and (some) state assets that the Congo-Zairian President Joseph Mobutu Sese Seko by and large dealt out to his local patrimonial cronies, which happened to be mostly members of North Kivu's Tutsi community during the 1970s and early 1980s (see also the previous discussion on contract legitimacy conflicts).

But, as Willame (1997) and Bucialimwe-Mararo (2001) explain in some detail and as was widely related in my interviews with local researchers, customary authorities and witnesses to history, the conversion of former colonial plantations to pastures during and shortly after the *zairianisation* period occurred at a breathtaking speed. And what is more, its magnitude was similarly stunning: nearly all of the former colonial plantations corresponding to roughly 30 percent of the farmable land in Masisi and between 10 and 20 percent of that in Rutshuru and Nyiragongo were converted into large-surface pastures within not much more than a decade. In the wake of this conversion, tens of thousands of small farmer households

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and Twa Mbute and the Kano and Rega. All of these traditionally non-agrarian communities combined comprise approximately 7 to 8 percent of the provincial population total (DRC, 2017). The Rega and Kano were traditionally hunters and shifting cultivators, but they have by and large integrated into the agrarian communities of Walikale (series 1.4.2 interview, Goma, 2012). The four distinct Mbute communities are traditionally hunter-gatherers; many of them still are to this day, but population pressures and other influences are forcing increasing numbers of hunter-gatherers into agrarian or urban lifestyles (series 1.4.2 interviews, Goma, 2012). The Tutsi are traditionally sedentary and transhumant pastoralists (the elites were sedentary whereas the lower strata were largely transhumant (Chretien, 2006)), many of them are still cattle-herders but many have also become cultivators. Transhumance and semi-nomadic pastoralism is practiced by a tiny portion of the Tutsi and mostly only in designated areas that include a small number of public grazing grounds (such as a large surface near Bunagana in northeastern Rutshuru) or very large private farming concessions where Tutsi shareherders oftentimes shepherd the cattle herds of large, mostly Tutsi or Hutu-owned farms in a more or less transhumant mode of life (series 1.1.3 and 2.3.7 interviews, Goma and Masisi, 2012; see also DRC, 2017). This somewhat contrasts with the Banyamulenge Tutsi of South Kivu, of which many are still transhumant cattle herders in the high plateaus of Minembwe (Willame, 1997; Ruhimbika, 2001).

<sup>173</sup> For a discussion of the expropriation, nationalization and re-privatization of former private colonial land assets in the course of the *zairianisation* please see section 7.2.3.

were driven from former plantation lands that they had informally settled after the emigration of the European colonizers in the early 1960s (Nawezi, Katuala, Tshimanga and Zinga, 1981). The conversion and the resulting evictions led to massive conflicts over farmland and contributed to rising inter-communal tensions (Nawezi, Katuala, Tshimanga and Zinga, 1981; Bucialimwe-Mararo, 2001; Tull, 2005 and Bucialimwe-Mararo, 2013). And the inter-communal tensions linked to the land conversions are still very much palpable throughout the southern four territories of North Kivu; and they were nearly consistently evoked in my interviews with tenure conflict stakeholders, customary authorities and other community representatives.

It is then also that many of the disputes and conflicts over land use that oppose farmers and herders are not linked to farmer-herder competitions for communal grazing grounds (as was mostly the case in some parts of Nyiragongo territory as well as around Bunagana in Rutshuru), but to conflicts between herders and farmers around private concessions or *emphyteutic* lands. Many of these conflicts are linked to other disputes over boundary transgressions (resulting, for example, from herders driving cattle –inadvertently or purposefully - through plantations on their commutes between private pastures or between private pastures and water wells) or over boundary lines (resulting, for example, from herders inadvertently or purposefully driving cattle into plantations that they believed to be erected on their (or their concession holder's) lands or that of their superiors<sup>174</sup>).

The potentially explosive nature of farmer – herder type land use disputes in North Kivu is not due to their high number (province-wide, they are comparatively rare), but rather to the risks of ethnic polarization that they inherently bear: Cattle herders are predominantly Tutsi, whereas cultivators are predominantly members of all the other main ethnic

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<sup>174</sup> As highlighted earlier in this chapter, cattle herding Tutsi *peasants* oftentimes have shareherding agreements with large cattle-raising concession-holders (which are in the southern four territoires of North Kivu mostly from the Tutsi or Hutu communities). Such shareherding agreements oftentimes imply that the herders semi-autonomously manage the herds, of which they typically also own a small share; and they permanently live with the herds on the concession-holders pasturelands. My survey and interview fieldwork suggests that disputes and conflicts between the shareherders on the pasturelands and adjacent cultivator populations are relatively common, particularly when herds are commuted between pastures or between pastures and water wells. Also, given the widespread lack of precise land surveys and permanent boundary markers, boundary conflicts around cattle raiser concessions are widespread.

communities of the province. Land use conflicts therefore tend to mirror ingrained patterns of more or less recent or recent historical (by and large postcolonial) inter-communal conflicts as they often oppose communities that had been actively involved as opposing parties in the armed conflicts of North Kivu's *Kanyarwanda* and *Masisi Wars* and the larger, regional AFDL and RCD wars, as well as the CNDP and M23 rebellions that followed suit.

As a result, land use conflicts that oppose cultivators and cattle-raisers have a strong tendency to proliferate along relatively clear-cut community fault lines and to draw in armed actors and political patrons that easily serve as conflict vectors into other levels of political and geopolitical competitions.

Our questionnaire survey suggests that **boundary disputes** constitute, besides succession and contract legitimacy disputes the most widespread dispute types. The great majority of the boundary disputes take place at the individual household level, with neighbors disagreeing over the precise position of property boundaries. In many cases in both the customary and the formal legal domains it appears that a conjunction of administrative weaknesses in areas such as surveying, contract generation and record-keeping pave the way to disputes over both *bona fide* errors, deliberate changes to documents and outright fraud. In small-scale boundary disputes, the parties involved oftentimes negotiate and resolve disputes directly, while clan elders or members of the customary authority oftentimes mediate more complex negotiations.

However, this present research has also hinted that the mediation by clan elders and customary authorities is not uncontroversial. This applies particularly in cross-ethnic dispute settings, in which the legitimacy and authority of customary nobility representatives is more often contested.

What is more, whereas most boundary disputes represented very small-scale cases, there were several exceptions that included medium to large-scale conflicts. For example, boundary disputes were common in some locations around the *Parc National de Virunga* (PNVi) where adjacent populations sometimes cooperated to challenge the official park boundaries. This, it appeared was particularly the case in northern Rutshuru and south-eastern Lubero, where substantial numbers of homesteads had been expropriated and oftentimes

forcefully displaced by the colonial authorities during a series of enlargements of the PNVi during the 1930s, 1940s and early 1950s (see also Mastaki (2005) and Bouvy (2015) for brief discussions of land tenure conflicts in the proximity of the PNVi and Nzabandora (2005) for a discussion of the expropriations and forced displacements linked to a series of enlargements of the park in the 1940s).

Whereas the displacements had taken place many decades ago, they had directly affected the access to farmland for the ancestor generations of several survey and interviewee respondents, and from the vantage point of some of the respondents, this past injustice legitimized their claims for restitution, or, in some cases, for a unilateral exploitation of the PNVi's substantial natural resources. And, in analogy to similar debates around the *Kahuzi-Biega* National Park (see e.g. Kasisi and Brown, 2009 for a discussion of boundary and resource exploitation conflicts around the Kahuzi-Biega Park), some of those that challenged the park's boundaries or the state's prerogatives to manage the park's resources were willing to apply force in order to achieve their goals.

What is more, several series 2.1.6 and 2.3.1 interviewees have suggested that in some cases of land conflicts in and around the PNVi, there is a notable confluence of interests between members of some of the park-proximal communities and armed groups including different poacher and other criminal gangs as well as armed militias such as the ADF-Nalu, the FDLR, the APCLS and other Mayi-Mayi groups, as well as the scattered remnants of the CNDP and the M23 that have all illicitly exploited the PNVi's resources by force throughout different periods of the last two decades. These groups have, together with armed poacher gangs, illicit miners and armed elements of park-adjacent populations, jointly contributed to the murders of up to 150 PNVi park rangers during the past 20-year period (series 1.4.5 interview by telephone, 2015; see also Howard, 2016 for more recent numbers on violent ranger deaths in the PNVi).

In order to alleviate the demographic and resource scarcity pressures in certain land tenure conflict hotspots in the vicinity of the PNVi, the government agency that is responsible for administrating the DRC's national park resources, the *Institut Congolais pour la Conservation de la Nature* (ICCN) has been developing, in cooperation with the *United Nations Educational, Scientific and Cultural Organization* (UNESCO) and the semi-private

*Virunga Foundation* a schedule that will allow certain communities inside and in the vicinity of the PNVi to exploit some of the park's resources in a controlled manner and to facilitate the exploitation and control of the latter via several infrastructure projects inside and near the park<sup>175</sup>.

My interview work suggests that some of the adjacent populations have high expectations with regards to an improvement of their socioeconomic situation towards these programs. In fact, according to several series 1.1.4 and 2.1.1 interviewees the programs appear to have at least temporarily alleviated some of the most pressing tenure conflicts linked to the park boundaries. For example, an interviewed peasant farmer organization representative from the Nande community in proximity to the PNVi near Kanyabayonga expressed his expectations:

*"... if the park authorities really want to make a difference they will have to invest in the communities. I have heard that they will finance schools, medical stations and possibly communal hydropower plants. This can bring real development to our villages. We have high expectations..."* (Series 1.1.4 interview, Rutshuru, 2014).

However, several respondents from the same community also expressed reserves and suggested that it will be extremely difficult to meet many of these expectations. On a similar note, an interviewed consultant that was working for development projects in Rutshuru stated:

*"... it may prove to be challenging to offer viable solutions short of restituting some of the park's lands in the long term because people are profiting from their illegal exploitations in the park and the lure to exploit the park will still be there even if substantial investments are ultimately made and the people around the park profit from these. Potential investments will never reach the entirety of the population and there will be those that will feel left out. The park is just too interesting as an economic option. And the people here feel that they have the right to use the park because it is part of their ancestral land..."* (Series 1.4.5 interview, 2014).

Whereas the boundary conflicts around the PNVi bear the potential for medium or even large-scale conflict propagation in that larger segments of park proximal populations may become involved and collectively force their access to the park's resources, the park-related

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<sup>175</sup> See also the website of the Virunga foundation (Virunga National Park, 2017) at <https://virunga.org/> for a presentation of the ongoing projects

boundary conflicts do not appear to inscribe themselves directly into any antagonistic social identity-defined patterns (such as is oftentimes the case with, e.g. land use conflicts between cultivators and cattle-raisers or several of the other above-discussed conflict subtypes). Nevertheless, social (mostly ethno-tribal) identities appear to play a role in the conflict negotiation and actor recruitment patterns. As was also reported from the boundaries of the Kahuzi-Biega National Park in South Kivu (see e.g. Kasisi and Brown, 2009) the communities that had suffered expropriation via the park enlargements also appeared to be those that were mostly engaged in the boundary disputes. And they appeared to use the shared community identities for the recruitment of conflict actors.

But other subtypes of boundary conflicts have a substantially stronger tendency to follow social identity patterns. Indeed, several of the boundary conflicts that were related to me during the questionnaire survey and subsequent interview work in the territory of Masisi and western regions of Rutshuru opposed individual large landholder households of primarily the Tutsi and secondarily also Hutu communities to customary clients of either the Hunde, Hutu and Nande communities.

Even well before the eruption of the current boundary conflicts around the affected large concession lands of Masisi and Rutshuru, tensions over the access and ownership rights to these lands were high. This is at least partially because in many cases, the concessions had been acquired by the concession-holder families in the wake of the *Zairianisation* process of the early and mid 1970s, in which previously colonial land assets were nationalized, reprivatized and thereafter sold at advantageous price tags to the contemporaneous neopatrimonial cronies of the Mobutu administration. As previously highlighted in this chapter, most of the *Zairianisation's* land beneficiaries in the territories of Masisi, Rutshuru, southern Lubero and eastern Walikale were members of the rwandophone community, and most of these, again, belonged to a relatively small circle of influential families of the Tutsi community.

The members of the locally established agrarian chiefdoms of mostly the Hunde (in Masisi and western Rutshuru), but also Nande (in southern Lubero), Nyanga (in eastern Walikale) and Hutu (in eastern Rutshuru) communities of which much of the colonial lands had been expropriated by royal decrees (see Wauthion, 1956) during the colonial period, had

been pushing for restitution of the colonial concession lands back into their customary domains after the Congo's independence and the re-nationalization of the colonial assets via the so-called *Bakajika law* (i.e. the legislative order n° 66/343 of June 7<sup>th</sup>, 1966) and the so-called *Constitution Revolutionnaire* (i.e., the second post-colonial Constitution promulgated in 1967). The distribution of these land assets to the regime's political cronies that in large parts belonged to an ethnic community that many locals regarded as *allochthones* or outright *foreigners* had already exacerbated ethnic tensions throughout the affected areas.

But what is more, many concessions were also established or enlarged via the *domanialisation* processes within which land was transferred with the aid of customary authorities and state agents to private investors. These *domanialisation* transfers reached their peak during the decade that followed the 1973 land reform (see the land code 73-021) that, in fact, devised and established the *domanialisation* land transfer mechanism in the first place. By consequence, two more or less simultaneous processes have shifted immense land wealth primarily from the Hunde, but secondarily also from the other Nyanga, Tembo and Hutu agrarian chiefdom communities to the traditional cattle-herding Tutsi. In the first of the two processes, the transfer was indirect via both the colonial state and post-colonial states whereas in the second of the two processes the transfer was more or less direct. But what is more important is that both processes more or less simultaneously led to a massive distribution of coveted land assets upon which several local communities laid territorial claims to a heretofore largely by agrarian standards landless community, namely the cattle-herding Tutsi that many locals regarded as foreigners.

**Contentious land occupations** predominantly resulted from unresolved land disputes of the six source conflict types discussed above. But in some cases, they occurred independently. It was quite common, for example, for lands of internally displaced persons (IDPs) and refugees to be (legitimately with the approval of customary authorities or illegitimately without the approval) occupied by neighbours that had stayed behind, by arriving IDPs from other regions of the country, or simply by entrepreneurial youngsters or young families that could not expect to inherit a reasonably large plot of their own, inciting them to take their luck into their own hands and occupy temporarily unoccupied lands. On other occasions, private concessionary lands were unilaterally occupied by adjacent farming



communities where concessions or parts thereof had been temporarily abandoned. The lands had often been left as a consequence of previous conflicts or generalized physical insecurity, or, allegedly also in some cases because land holdings were simply considered long term investment assets that need not produce immediate returns<sup>176</sup>. For locals, such land could at times seem to have been abandoned. In some instances, occupants claimed title to contentiously occupied lands by right of acquisitive prescription clauses in Congolese land law. In others, they simply occupied the land and “*hoped for the best*” as one interviewee stated (series 1.1.6 interviews, Goma, 2012). A professional conflict mediator from North Kivu explained:

*“Unoccupied farmable land in a region like eastern North Kivu is sure to be occupied by someone sooner or later. There are just too many people and not enough land. People cannot understand that land is left unused. Their argument is comprehensible: They need land and they have the manpower to make it bear fruits. But there are also many cases where concession holders, which are oftentimes from the Tutsi community in this area, are afraid to return to their farms and operate because FDLR and some of the local Mayi-Mayi militia threaten to kill them. So their farms are left abandoned in the hope that some day security will return; and in the meantime, local peasants occupy their lands. The concession holders know that once farmers are permanently installed on their lands it is very difficult to retrieve the lands. Sometimes the landowners pay soldiers or militia members to visit the land and chase off all the illegal occupants. On these occasions, occupants sometimes lose their harvests and in some cases, where the occupants have installed homesteads and permanent structures, the latter are burnt down. This leads to mounting animosities, between the occupants and the owners, but also between the communities to which the occupants and land owners belong.”* (Series 1.1.6 interview, Goma, 2012).

In some cases it appeared that land occupants legitimized their claims to the land comprised in commercial farmlands by what one interviewee referred to as *indigenous birthrights* to land that lay within his community’s *tribal territory*. One interviewed member

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<sup>176</sup> As briefly mentioned earlier in this section as well as in the land rights discussion of the study area Chapter 6, inactive investment into land assets are actively discouraged by Congolese law through firstly, the emphyteutic maintenance and exploitation conditionalities and secondly the acquisitive prescription laws as laid out in the land code 73-021. These laws encourage active land exploitation, which is widely regarded as a safeguard against the wasting of agricultural potential in a poor, land shortage-stricken region. However, as previously highlighted in this section, the fieldwork for this thesis suggests that these laws also offer themselves to fraudulent instrumentalisation.

of a tribal youth association that claimed to represent a group of Hunde land occupants of a small, *rwandophone*-owned farm in Masisi claimed:

*“We are the children of this land, it belongs to us and it was stolen. We have only taken back what is ours. Our fathers have lived here for many generations. We are the indigenous people; we have a birthright to this land. And we have not taken it for pleasure. We have acted in a state of emergency. We are the sons of this land and we are starving here while Rwandans and other foreigners become rich”.* (Series 2.1.1 interview, Goma, 2012).

As highlighted above, several cases where lands were illegally or ambiguously occupied by peasant populations concerned farms that were mostly owned by *rwandophone* landholders. A second group of contentious land occupations concerned public lands such as national parks, other protected areas or public livestock grazing grounds, where demographic pressures and ethno-tribal territorial demands conflicted with the prerogatives of the central state and led small farmers or landless rural populations to use land occupations as a way to concretely establish their claims on the ground.

**Forced evictions** typically arose out of uncontrolled disputes within one or more of the six types of source conflict, or again as a response to contentious land occupations. They usually reflected the power relations in a given stakeholder landscape. A common example of forced evictions involved armed groups that evicted small farm households from lands under contention on the orders of concession-holders or of representatives of state authorities. The evicting parties employed armed agents such as local bandit groups, armed militias, rebel groups or regular armed forces to carry out evictions. By some accounts, the evicted parties also established or employed armed groups to effectively oppose eviction or to forcefully reoccupy land. Where power relations on the ground were unstable, forced evictions and contentious land occupations tended to alternate in consequence, producing perpetrators and victims on each subsequent cycle.

Forced evictions constitute by their very definition a conflict in an advanced stage that implies a substantial application of force or violence. In several cases such evictions lead to the destruction of homes and crops and the long-term or permanent displacement of the populations that had settled on the land. As highlighted by the questionnaire survey, forced evictions are relatively rare as a percentage of all experienced disputes and conflicts.

Nevertheless, 3 percent of the surveyed populations have experienced forced eviction as a result of a land tenure conflict; and in many of the surveyed cases, the property, health and moral damage suffered by the victims was substantial.

#### **7.1.3.1 Tenure Conflict Types and their Propagation Potential: A Brief Subchapter Summary**

Subchapter 7.1.3 has taken a close-up look at land tenure conflicts; it has identified patterns in the latter and has used these patterns to propose a conflict typology that presented 8 land tenure conflict types and a larger number of subtypes, including their most salient parameters. An ancillary, but nevertheless important part of the typology was a brief evaluation of each tenure conflict type and/ or subtype for its conflict propagation potential. In very broad terms, violence and propagation potentials increased with the economic size or weight of the involved stakes, the numerical, financial, military and/or political clout of the conflict stakeholders, the complexity of the conflict particular with regards to its interlinkages with other land tenure or related conflicts and, last but not least, the conflict's reproduction of historical stakeholder fault line patterns. The most volatile conflicts were those that either involved very large and/or very powerful stakeholder groups, as well as those that reproduced historically grown social identity fault lines. In both cases, land tenure conflicts had a tendency to interweave, reciprocate with, or even trigger larger communal, civil or even interstate conflicts.

None of the eight types of tenure conflict in the proposed conflict typology united in itself all of the conflict propagation-relevant parameters. Nevertheless, certain tenure conflict sub-types stood out. These were firstly, customary succession conflicts that triggered contract legitimacy disputes and related conflicts further down the customary land tenure pyramid<sup>177</sup>, secondly, contract legitimacy conflicts that were either linked to customary succession disputes (see above), the integration of large numbers of tribal outgroup members into a

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<sup>177</sup> This conflict type normally opposed customary authorities and their client populations to other customary authorities and their client populations.

community's customary land tenure system<sup>178</sup>, high-volume transfers of previously customary land plots into the state and private property domains via processes including the so-called “Zairianisation” and “domanialisation”<sup>179</sup>, and the customary and formal-legal property rights prescription processes by which land rights are lost as a consequence of non-occupancy or non-exploitation<sup>180</sup>. A third group of highly volatile tenure conflict subtypes was linked to disputes over land fee, redevance or tax payments mostly in the customary tenure domain<sup>181</sup>. And finally, tenure conflicts involving forced evictions or unilateral, ambiguous or forced occupations had, by definition, attained confrontational dynamics and normally also levels of complexity that were closely associated with increased risks of violent conflict propagation.

It was proposed in the conceptual discussions of Subchapters 2.1 and 2.6 that the progression of a rivalrous interaction on the competition – dispute – conflict continuum is largely defined by its embeddedness into formal, semi-formal and informal dispute and conflict arbitration, mediation and adjudication institutions. It was with this in mind that this thesis' premise was formulated, namely that North Kivu's difficult socioeconomic (industrial-developmental, biophysical and demographic) geographies underpin its high competition levels for farmable land, but that historical and (formal, semi-formal and informal) institutional factors explain why North Kivu's high land tenure competition levels translate into extremely high land tenure dispute and conflict levels. The research questions, hypothesis and sub-hypotheses then look at dispute and conflict prevalence, dispute and conflict types and the historical and present institutional environments within which disputes and conflicts thrive. The previous subchapter (7.1.3) has adopted a close-up view of tenure conflict to produce a

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<sup>178</sup> This occurred on several occasions in North Kivu in the wake of massive state-sponsored immigration movements. The resulting tenure conflict sub-type tended to oppose “autochthonous” customary clients to “allochthonous” (mostly Hutu) customary clients and smallholders.

<sup>179</sup> This tenure conflict sub-type tended to oppose “autochthonous” customary clients to mostly “allochthonous” (mostly Tutsi but increasingly also Hutu and members of other communities) landholders.

<sup>180</sup> This tenure conflict sub-type tends to oppose IDPs and refugees to newcomers and other illegal land occupants. The conflict sub-type does not per se follow social identity-defined patterns. However, the forced population displacements that were linked to the communal and civil conflicts of the 1960s, 1990s and 2000s in North Kivu oftentimes disposed of clear social identity-defined patterns. By consequence, the stakeholder landscapes in more or less recent and current disputes over prescription rights tend to dispose of similar identity fault lines. This, in turn, attributes to these conflicts a significant potential to feed intercommunal tensions.

<sup>181</sup> This type's most significant sub-type opposed primarily “allochthonous” customary clients to mostly “autochthonous” customary authorities.

conflict typology. The following subchapter (7.1.4) will maintain the same close-up view of tenure conflict in order to examine the roles of both the customary institutions and the formal state institutions as land dispute and conflict arbitrators, mediators and adjudicators. The subchapter will initially look at the roles of the customary and the state institutions independently of another and thereafter in conjunction. The interest of the distinct view of each institution speaks for itself. The interest of the conjunctive view is driven by the fact that despite their profound alterity, the customary and state institutions are part of the same political construct, and they are therefore ultimately the same.

#### **7.1.4 The Custom and the State in Conflict Mediation and Adjudication**

**Sub-hypothesis 4: The quasi-ubiquity of land tenure conflicts in North Kivu is, on a first level, a testimony to the land tenure system's failure to manage and mitigate competition, dispute and conflict over land. On a second level, it is also a testimony to the Congolese state's lack of effective rule, direct territorial control and empirical statehood in the country's rural periphery.**

The fieldwork discussions of the previous three subchapters have, on a first level, highlighted the importance that the surveyed populations of North Kivu attribute to land tenure from both socio-economic and socio-cultural standpoints. On a second level, the survey also highlighted that a majority of the surveyed households experienced land shortage, i.e. that a majority of survey respondents could not access enough farmland to meet the subsistence or semi-subsistence needs of their households. A third level of the inquiry highlighted the near omnipresence of dispute and conflict over land tenure in the surveyed regions of North Kivu; and a fourth level pointed out the most prominent types of land tenure dispute and conflict as well as their reported prevalence rates. And finally, a fifth level of the inquiry pointed out the most important factors in the development of the different conflict types.

The current sub-hypothesis follows up on the results presented in previous sections. Given that the purpose of a land tenure system is to provide an institutional framework within which competitions for land are negotiated in a cooperative or at least non-confrontational manner, the high prevalence of tenure conflict in North Kivu represents in itself a testimony to

the failure of the land tenure systems to fill out the functions for which they are nominally designed.

Attesting institutional weakness to a state that the international literature (see e.g. Bayart, 1989; 2006; Herbst, 2000; Tull, 2005; Collier, 2008 and Young, 2012) regularly cites as a case in point for weak administration is not very original. But the point that the thesis is making is not the attestation of weakness in itself. The point is that if the system were entirely dysfunctional it would be no longer in place. But the DRC's land tenure system has been in place for a while. In fact, as highlighted in the study area Chapter 6, there has been a substantial level of institutional continuity between the land tenure systems of the mid and late colonial periods, those of the early post-colonial periods and that of the presence.

Despite of its failure to complete the functions that are normally attributed to a land tenure system, namely to frame and guide competition, the DRC's tenure system is barely contested and it sits comfortably in its place. The discussion of the fifth hypothesis will show, amongst other things, that this is because the real purpose of the land tenure system is another, namely to further the reach of the central state and its elites into a country side that largely escapes their direct control.

But before we embark on the discussion of purpose, the following section will illustrate an additional institutional failure, namely the failure of the Congolese legal system, as well as the partial failure of its customary adjutant, to administrate dispute and conflict over land and thereby to compensate for the land tenure systems' failure to administrate competition.

The inadequateness of the legal system as administrator of land tenure disputes is highlighted by the system's extremely low adjudication and arbitration rates: In 24 survey locations of the 4 southern territories only 10 percent of the 245 respondents that had been involved in tenure conflict (questionnaire #1, question #23a;  $N_T = 245$ ;  $Y_T = 25$ ;  $P_T = 0.10$ ;  $S = 0.10$ ;  $P_S = 0.96$ ) had access to formal adjudication, arbitration or mediation services. And only slightly 60 percent<sup>182</sup> of those that accessed the central state's services reported that the latter

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<sup>182</sup> It appears expedient to note here that the number of participants for this particular question (namely only those that had sought state services for adjudication arbitration or mediation of a personally experienced tenure conflict) was so small (25) that any further statistical breakdown would be meaningless. This also means that the

had resolved the underlying dispute. Follow-up interviews revealed that in several cases where the legal system had been involved without success, the case was still pending. All in all, the courts in North Kivu appear to be completely overwhelmed by land tenure litigations, although our survey data suggests that only 10 percent of land disputes are filed with the courts. As highlighted earlier in this section, approximately 90 percent of all legal cases in North Kivu involve disputes over land. Thus, several of the unresolved legal cases were still pending; others had been dismissed by the court and in again other cases, at least one of the litigating parties had simply defied the court orders and the conflict had re-erupted outside of legally sanctioned litigation frames of litigation.

The involvement rate of customary courts in rural land tenure conflict arbitration and adjudication was significantly higher (questionnaire #1, question #23c;  $N_T = 245$ ;  $Y_T = 124$ ;  $P_T = 0.51$ ;  $S = 0.23$ ;  $P_S = 0.45$ ). However, the success rate of the customary institutions was at 56 percent<sup>183</sup> even slightly lower than that of the central state institutions. Follow-up interviews with questionnaire respondents revealed similar shortcomings to those of the state courts: In many, but certainly not all cases, at least one of the following was claimed to apply: customary institutions were overburdened, they had significant case backlogs, their competency or their impartiality were not trusted by the customary clients or their rulings were simply defied. Some of these findings can be illustrated by the following statement of a Nande peasant farmer from northern Rutshuru:

*"I have been a peasant farmer and client of Mwami (...) all my life. I have been involved in tenure disputes twice; once with my neighbour's father and once with my neighbor. It was always about the same land boundary between our plots. I had been using this plot with my husband for twenty-two years before he died in 2002. The boundaries had never changed and all our neighbors knew the boundaries. Only months after my husband's death my neighbor claimed a part of my land. It was so obvious that it was a fraud. All our neighbors knew where the boundaries were, they had been there for many years. We went to the community consultations first, but there was no compromise, so we went to the mwami's court. While the case was at the mwami's court my neighbor forced me to share my land with him. It took*

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result of 60 percent for this question is even much less relevant than the results of the questionnaire survey as a whole. It should not be regarded as representative of a population or even a local group because the margin of error is simply too high.

<sup>183</sup> Ibid.

*more than one year before there was a verdict. My neighbor got what he wanted and I lost a part of my best land. My neighbor died in the meantime and it is now his son. It is even worse now; he wants more land. The case has been with the mwami's court for two years. But in the end my neighbor will get what he wants. He will get it because we are in Rutshuru and he was born here and he is a Hutu. I went to school, even one year to university in Goma when I was young. But I was not born here; I am from Lubero, I am a Nande and I am a widow." (Series 2.1.1 interview, 2012).*

In total, amongst all surveyed respondents only 35 percent (questionnaire #1, question #23a;  $N_T = 245$ ;  $Y_T = 25$ ;  $P_T = 0.10$ ;  $S = 0.10$ ;  $P_S = 0.96$ ) stated that their land tenure disputes or conflicts had been resolved inside either a customary or a formal-legal adjudication, arbitration or mediation institution. Before this background, it may not surprise that the confidence rates in the adjudication, arbitration and mediation institutions of the central state (questionnaire #1, question #29;  $N_T = 497$ ;  $Y_T = 114$ ;  $P_T = 0.23$ ;  $S = 0.07$ ;  $P_S = 0.30$ ) were very low throughout the ethnic board. The confidence rates in the customary adjudication, arbitration and mediation institutions were slightly higher (questionnaire #1, question #28;  $N_T = 502$ ;  $Y_T = 153$ ;  $P_T = 0.30$ ;  $S = 0.16$ ;  $P_S = 0.51$ ); but they, too, were conspicuously low.

Possibly more interesting than the overall confidence rate statistics was their breakdown into ethnic components: For this purpose I categorized as *rwandophones* all respondents that self-qualified as either Hutu, Tutsi, Twa, Banyabwisha or rwandophones whereas all respondents that auto-identified as members of one of the so-called *autochthone* ethno-tribal communities (for the purpose of this exercise the so-called *autochthone* groups comprised the enlarged Nande, the Hunde, Nyanga, Kumu, Kusu and Kango/ Rega communities) are identified as *so-called autochthons*. And finally, all respondents identified as members of other ethnic communities and those that preferred not to divulge an ethnic identification were categorised as *others*.

Broken down by these improvised categories, the following results materialised: Firstly, the confidence rate into the central states adjudication, mediation and arbitration institutions was consistently low. For the *so-called autochthon* category the confidence rate was 21 percent ( $N_T = 188$ ;  $Y_T = 40$ ;  $P_T = 0.21$ ;  $S = 0.15$ ;  $P_S = 0.72$ ). The results were similar for the *rwandophone* ( $N_T = 252$ ;  $Y_T = 60$ ;  $P_T = 0.24$ ;  $S = 0.12$ ;  $P_S = 0.52$ ) and also for the *other* ( $N_T = 57$ ;  $Y_T = 14$ ;  $P_T = 0.25$ ;  $S = 0.20$ ;  $P_S = 0.81$ ) categories.



However, the breakdown of the results on the confidence rates with respect to the customary institutions revealed a divergence between the categories: Whereas the rates were comparably high in the *so-called autochthone* category ( $N_T = 190$ ;  $Y_T = 93$ ;  $P_T = 0.49$ ;  $S = 0.27$ ;  $P_S = 0.54$ ), they were remarkably lower in the *rwandophone* ( $N_T = 255$ ;  $Y_T = 48$ ;  $P_T = 0.19$ ;  $S = 0.16$ ;  $P_S = 0.86$ ) and *other* ( $N_T = 57$ ;  $Y_T = 12$ ;  $P_T = 0.21$ ;  $S = 0.28$ ;  $P_S = 1.33$ ) categories.

A detailed quantitative evaluation of the questionnaire results was only undertaken several months after the collection of the data, so that no follow-up research was made vis-à-vis the survey respondents on this particular question. However, the results suggest that members of the *rwandophone* and *other* categories are much less likely to trust the customary dispute and conflict adjudication, mediation and arbitration institutions. A possible explanation for this could be that a very large share of rwandophones resides in politico-administrative subunits that are headed by customary chiefs of other ethnic backgrounds than their own, whereas most of the so-called *autochthones* reside in units that are headed by chiefs of their own ethnic group<sup>184</sup>.

Given that customary land tenure is largely defined and regulated by the ethno-tribal customs of the presiding chief, it is possible that customary clients of other ethno-tribal background feel disadvantaged or marginalised in the customary systems. The conspicuously low confidence rates into the customary adjudication, arbitration and mediation institutions of members of the so-called *other* category appears to support this interpretation. While the survey data does not provide enough insight to draw any authoritative conclusions, my interviews with members of the so-called *rwandophone* communities from various locations in Masisi and western Rutshuru supported the interpretation that at least the rwandophone groups from these areas feel marginalised by the so-called *autochthonous* customary land tenure systems (series 1.3.4, 1.1.4 and 2.1.1 interviews, Goma, Masisi and Rutshuru, 2006, 2012 and 2014). As, for example one interviewed Hutu from Masisi stated:

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<sup>184</sup> Please see also the ethno-demographic presentation of North Kivu in the study area Chapter 6 that illustrates both the politico-administrative and the ethno-demographic geographies of North Kivu.

*“The Hunde always say that the Hutu and Tutsi are taking the land but nobody ever talks about the fact that most of us have lived here for generations. Two or three generations ago many of our forefathers have actually cleared the land that we are cultivating. The Hunde always say it is theirs. We, the Hutu are more than the Hunde, even here in Masisi, but the Hunde chiefs decide who gets the land and when there is a conflict it is the Hunde mwami and his court that decide who is right. Sure, there is a Hutu delegation at the court but they can only advise. If a Hutu has a dispute with a Hutu there is no point going to a Hunde court; we ask our own elders for advice instead. If there is a dispute between between a Hunde and a Hutu, there is even less reason to take it to a Hunde court. The bami and the chefferie administrations are supposed to work for the state, i.e. for all the Congolese, but they really work for their own communities; and some work only for themselves.” (Series 1.1.4 interview, Masisi, 2012).*

The past two quotations have underlined positions that were extremely critical of the customary courts. It should be noted that they do not reflect the entirety of the spectrum of answers that I received to the question. Indeed, there were many very positive and hopeful responses from people that believed in the customary arbitration, mediation and adjudication services. The above quotations were therefore not chosen for their representativity of the respondent landscape but rather so as to highlight salient and recurrent factors therein that I judge important for the understanding of the societal discourse over customary administration in North Kivu.

But the main conclusion that ought to be drawn from the evaluation of the results to questions 23, 28 and 29 and the interview discussion is that for any given reason the Congolese state undertakes little to manage competition, dispute and conflict in the land markets. Indeed, the Congolese state by and large leaves the management of the rural regions’ most critical dynamics to the customary administrations. And whereas these are more active as brokers, adjudicators and mediators in the land tenure markets, their success rate, as evaluated by the (non-representative) survey of its client populations appears to be similarly low as that of the central state institutions.

Possibly even more striking than the high involvement in land tenure conflict appears the extremely high rate of survey respondents that have been affected<sup>185</sup> by a violent conflict in which land tenure represented at least one of the key stakes (questionnaire #1, question #32;  $N_T = 510$ ;  $Y_T = 400$ ;  $P_T = 0.78$ ;  $S = 0.11$ ;  $P_S = 0.14$ ). A follow-up question enquired whether an armed organisation such as a unit or individual members of the national armed forces (FARDC), an ethno-tribal or other militia, a rebel organisation or a known bandit group had been implicated in the violent conflict over land; 66 percent of the respondents that had been affected by violent conflict and that responded to the follow-up question confirmed that an armed group had been involved in the violent land tenure conflict (questionnaire #1, question #37;  $N_T = 344$ ;  $Y_T = 226$ ;  $P_T = 0.66$ ;  $S = 0.24$ ;  $P_S = 0.36$ ).

This tendency of tenure conflict linking to armed vectors was confirmed by my interviews in Masisi, Lubero, Rutshuru and Goma (2012 and 2014) as well as by my own earlier publications (Pottek, 2007 and Pottek et al., 2015) and that of Bouvy (2015). In several individual and group interviews I held in follow-up to the questionnaire survey, a large number of respondents spontaneously emphasised the important roles that armed groups play as violent vectors of land tenure conflict.

And finally, additional hints that tenure conflict attached to larger violent conflict through the implication of violent propagation vectors came from the responses to questionnaire #1 survey question #41. Of the 375 surveyed respondents that answered this question 74 percent (questionnaire #1, question #41;  $N_T = 375$ ;  $Y_T = 277$ ;  $P_T = 0.74$ ;  $S = 0.25$ ;  $P_S = 0.34$ ) stated that in their point of view militias and other armed groups played important roles in the development and escalation of land tenure conflicts.

#### **7.1.4.1 The Close-Up View of Tenure Conflict: A Subchapter Conclusion**

The discussion of the first sub-hypothesis subchapter had highlighted elements of socioeconomic and socio-culturally defined human-land relations in North Kivu. The perspective was based on quantitative evaluations of views and opinions gathered from North Kivu's rural populations through questionnaires and from several interviews. The

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<sup>185</sup> The question defined *affectedness* as victimised by aggression, violence, forced, displacement, or destruction of goods; please see question # 32 of questionnaire #1 in the Appendix D.

unambiguous result of this research section was that land constitutes the central asset for the rural populations of North Kivu, both in socio-economic and social perspectives.

The discussion of the second hypothesis had highlighted the ubiquity of land tenure dispute and conflict experiences in North Kivu: over 40 percent of the surveyed individuals had been involved in a dispute or conflict over land. Significantly higher even were the rates of respondents that had been victimized or otherwise significantly affected by violent land tenure conflict. In short, land tenure was quasi-ubiquitous and its effects on the lives of the surveyed populations was substantial: it constituted at the very least one of the greatest factors of insecurity in their lives.

The third discussion had provided a conflict typology and identified eight different conflicts types; six were *source* type conflicts that were defined by the original cause of the conflict, the immediate stake or the “*bone of contention*”, whereas two were escalating conflicts that were defined by their anti-cooperative modes of conflict negotiation. All of the conflict types seemed to be at least partially driven by intense competitions in the land markets. But the main factors were of the human nature and they included, cultural, legal, administrative and political factors.

The fourth discussion underlined how disputes and conflicts over land tenure are oftentimes left to escalate outside of any formal, semi-formal or informal arbitration, mediation and adjudication institutions. Indeed, central state institutions directly administered less than 10 percent of land tenure disputes and conflicts, whereas customary institutions administered roughly 50 percent. The success rate as measured in percentages of successful resolution lay between 50 and 60 percent and was therefore was low for both institutions. Only slightly more than a third of all surveyed conflicts were resolved by the customary and state institutions combined.

All these above-cited results amount to a flagrant testimony of the failure of the Congolese state’s land tenure and legal systems, and thereby in a last consequence also a

failure of the state itself<sup>186</sup>. But it appears expedient to note that the Congo's land system including both pillars of its dualistic architecture have been around for a while: The study area Chapter 6 has shown that there was a significant amount of legal continuity between colonial and postcolonial interpretations of property ownership in the Congo, even if definitions of "private ownership" changed in its course. As the following Subchapter 7.2 will demonstrate, there appears to have been even more continuity in the application of property rights as well as their integration into logics and strategies of political administration.

Indeed, one could almost state that the Congolese land tenure system is "time-tested" despite its attested "dysfunctionality" with regards to its formally designated purposes. These, it has been highlighted, are to coordinate and channel competitions in the land markets and to diffuse disputes and conflicts over the latter (see Boshab, 2007 and Boone, 2014). The "time-testedness" of the Congolese land tenure systems has a different dimension. This dimension is inscribed in a logic of building territorial control where the direct mechanisms to create the latter are feeble or non-existent. The following hypothesis discussion Subchapter 7.2 will elucidate and underpin this argument.

## **7.2 A Birds-Eye View of Tenure Conflict in Historical and Regional Geopolitics**

The previous results discussion Subchapter 7.1 has highlighted the importance of the land resource to the rural populations of North Kivu; it has also examined the relative availability of farmland as reported by survey respondents; it has evaluated the prevalence of land disputes and conflicts as well as the level to which rural populations were affected by these. The previous subchapter has also established a land tenure conflict typology and analysed each of the proposed types and brought examples for most. And finally, the chapter has evaluated the engagement level and success of central state and customary institutions as agencies of tenure dispute and conflict arbitration, mediation and adjudication.

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<sup>186</sup> See the conceptual discussion on statehood in section 2.4 to 2.7 and Rotberg's (2003, pp.3) qualifications of statehood and failure by which the state's ultimate and minimal responsibility is to " ...enable citizens to resolve their disputes with the state and with their fellow inhabitants without recourse to arms or other forms of physical coercion..."

One of the most conspicuous results of the fieldwork exercise was that the Congolese land tenure system appears dysfunctional with regards to its formal purpose (which is to manage competitions, disputes and conflicts in the land markets). But a brief glance into the Congo's legal and political histories also show that the tenure system has been around for a long time as it has been used, although in changing expressions, by five successive state systems including the Congo Free State (the latter in a very rudimentary form), the Belgian Congo and the three post-colonial republics. The continuity of the tenure system's main elements suggests that the system is, or at least has been successful in a different domain.

This subchapter will use documentary and interview research as well as a few inputs from the questionnaire survey and from non-participant observation to evaluate the roles of land tenure in the construction of social identities, territorial rule and the geopolitics of peace and war. The subchapter will show how the multiple roles of land tenure and land tenure systems as forming elements of socio-cultural identities, as tools of territorial rule extension and as means of elite enrichment have oftentimes collided, and how their collisions have driven not only disputes and conflicts over land tenure, but also communal and civil conflicts, and ultimately also the most recent interstate conflicts of the African Great Lakes region.

The subchapter will begin with a restatement of the fifth and final sub-hypothesis and then proceed to a brief presentation of North Kivu's ethnic communities, their geographic distributions, traditional lifestyles, traditional forms of political organisation and their most prominent types of land tenure. The discussion will then proceed to discuss the integration of the local communities and their political units including their land tenure systems into a succession of formal state systems that was by and large exogenously imposed firstly via colonisation and thereafter via decolonisation<sup>187</sup>.

In its course, the evolving discussions will show how land tenure was consistently used by colonial and postcolonial state authorities as tools of both extending territorial state control

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<sup>187</sup> The political system that the elites of the postcolonial Congo chose to adopt was largely cast on the colonial system. The conjunction of this, and the fact that the political elites that drove the decolonisation and postcolonial state-building processes were urban elites, implies, from my vantage point, also an exogenous imposition of a political system. The political system of the post-colony was certainly not a making of North Kivu's rural Nande, Hunde, Hutu, Nyanga, Kumu, Tembo and Tutsi communities.

into a rural countryside that otherwise oftentimes escaped the latter, and, to increasing degrees during the postcolonial era, also as a tool of personal enrichment for political elites and their client networks.

And finally, the discussions will show how the functional redefinition of the land tenure system (from managing competition, dispute and conflicts in the land markets to firstly, projecting state power via a land based indirect rule system into the rural countryside and to secondly, enriching central state elites and their crony networks) has played a central role in spawning conflicts over land and social identities in North Kivu.

**Sub-Hypothesis 5: The Congo's (historical and current) land tenure systems' primary purpose and design is not so much to manage resource competitions and settle disputes and conflicts but rather to serve a logic of territorial control. This has spawned and aggravated quasi-permanent tensions and recurring and widespread conflicts over land tenure and social identities; and particularly in the four southern territories of North Kivu it has contributed to the nurturing of intense and longstanding geopolitical tensions that have erupted on several occasions in recent history as communal, civil and interstate wars.**

### **7.2.1 North Kivu's Ethno-tribal Communities and Elements of Customary Land Tenure**

Depending on the definitions of what constitutes an ethnic group and what constitutes *autochthony*<sup>188</sup>, it may be considered that there are anywhere between eight and about twenty-two *autochthonous* ethno-tribal communities in the province of North Kivu. Whereas until the recent past, official documents of the DRC (2005) listed eight *autochthonous* (the Nande, Hunde, Nyanga, Tembo, Kusu, Kumu, Kano and Mbute) and two *allochthonous* (the Hutu and the Tutsi) communities, more recent documentation appears to pay closer attention to the auto-definition by communities. The governmental CAID website (DRC, 2017)<sup>189</sup>, seems to reflect

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<sup>188</sup> See also the conceptual discussions on *ethnicity* and *autochthony* in the conceptual discussion Chapter 2; and see also a discussion on the controversies on how the concepts of *ethnicity* and *autochthony* are applied in North Kivu today in the study area Chapter 6.

<sup>189</sup> In fact, the CAID website (2017) takes a middle-way between recognising an ethnic status and that of a tribe to the five northern communities Mboba, Talinga, Babila, Bakombe and Balese, which it refers to as *tribes*, but it

that policy in listing 16 ethno-tribal communities. An extrapolation of the data listed on the site allows devising an approximate list of demographic strength of these 16 communities. In descending order of demographic strength would appear the Nande (35-40%), Hutu (25-30%), Hunde (5-7%), Nyanga (5-7%), Tutsi (3-4%), Tembo (2-3%), Kumu (2-3%), Mbute (2-3%), Kusu (2-3%), Mboba (2-3%), (Talinga (2-3%), Kano (1-2%), Babila (1-2%), Bakombe (1-2%), Pere (1-2%) and Balese (1-2%). It is important to note however, that there are substantial contrasts between different data sources on the ethno-demographics of North Kivu and elsewhere in the DRC. At least to some degree, these contrasts appear to reflect political interests and preferences amongst those that commission the assembly, those that assemble and those that publish the data. This impression is well reflected in the quote from a local source that aided in the synthesis of the data represented in the maps of the study area Chapter 6:

*“You cannot trust ethno-demographic data in the Congo and even less in North Kivu. First of all, I would not trust the sources and methods of those that assemble, aggregate and transmit the data. But more importantly, statistical data that is broken down by ethnic community has an inherent political component. Ethno-demographic data is routinely manipulated by the political administrations from the lowest levels of the groupement that may prefer not to report, to underestimate or again to exaggerate the presence of an ethno-tribal community within their space. And it does not end there: Any level in the chain might have an interest to manipulate. Or there might be a directive to change certain numbers by a higher level of administration. Nevertheless, we have to work with what we have and just let our clients know”.*

Given that the North Kivu’s Mbute really comprise four distinct ethno-linguistic communities, the list can be easily extended to a list of 19, and sub-categorisations of the North Kivu’s Hutu and Tutsi communities, as well as of Walikale’s Kano and Lega communities would increase the total number to 22. On the other side, the list could be contracted and if, as is oftentimes practised for the purpose of demographic estimates, the Nande, Mboba, Talinga, Babila, Bakombe, Pere and Balese are all grouped together, the

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lists them as distinct groups in its ethno-demographic list as it normally only does with ethnies. Furthermore, the site clearly distinguishes between these five groups and the Nande, which would suggest that they are distinct from the Nande ethnie and therefore not just tribes, but distinct ethnic communities.



enlarged Nande community comprises over 45 percent of the provincial population. Similarly, if the Hutu and Tutsi and Twa were to be grouped into a single language-based category called *rwandophones* (as is oftentimes practised for various purposes), the latter would comprise roughly 30 percent of the population total. The enlarged Nande, *rwandophone*, Hunde-Tembo and Nyanga communities would comprise almost 90 percent of North Kivu's population. And it is also these four (enlarged) communities that comprise the near-totality of the customary territorial implantations (as represented in the customs-administered groupements and chefferies) in North Kivu.

Of all the sixteen ethno-tribal communities listed by the CAID website (DRC, 2017) the majority are traditionally cultivators; but there are several exceptions: The four distinct Mbute groups, i.e. the Kango, Asua, Efe, and Twa are traditionally hunter-gatherer communities. Their combined distribution range includes all of North Kivu's territories, as they populated the forests of a much larger region that also includes Rwanda, Burundi, south-eastern Uganda and much of the Congo Basin (Vansina, 1990) until large swaths of eastern North Kivu's forests were cleared for agriculture during the 20<sup>th</sup> century and the hunter-gatherers either left or became clients of the expanding local chiefdoms and, to a lesser extent, also of the commercial farms.

The Babila of Beni and the Kano and Lega of Walikale are traditionally hunters and shifting cultivators (series 2.3.7 interviews in Goma, 2012), whereas the Nyanga, Hunde and Tembo practised both hunting and sedentary agriculture around small political centres that were largely agrarian, but that also disposed of surfaces for livestock raising including cattle-herding (series 1.1.2 interviews, Masisi and Walikale, 2012). The Nyanga, Tembo, Kano and Kusu inhabited (and still principally inhabit) the territory of Walikale (DRC, 2017).

Most of today's Masisi and the western areas of Rutshuru were inhabited by agricultural (Hunde) and hunter-gatherer (Twa) communities. According to series 1.1.2 interviews with a Hunde elder in Masisi (2014), the eastern region of the present Hunde distribution range was organised into a small number of highly centralised agricultural chiefdoms that disposed of tributaries in the forests in the western parts of the Mitumba range and the Mitumba to Congo Basin transition area. The elder stated:

*“There were two dominant Hunde chiefdoms that were associated with the clans Bashali and Banyungu. The chiefdoms were independent of another but there was important social, cultural, economic and political exchange. Most of the region’s smaller Hunde chiefdoms and clans were tributaries of either the Bashali or the Banyungu. The Hunde lived in agrarian villages surrounded by fields in which they cultivated, but also by pastures, where they raised cattle, and by forests. The western parts of the range were thinly populated with widely dispersed Hunde clans and mini-chiefdoms that practised a mix of agriculture and hunting. The boundaries between chiefdoms were the people and their villages so you cannot identify precise historical borders. There were two distinct communities occupying the Hunde chiefdoms: the Hunde and the Twa. The Twa had been there since time immemorial whereas the Hunde had migrated to the area from the Toro and Bunyoro regions in Uganda about three hundred years ago. The Hunde and Twa communities remained largely distinct and separated, but not entirely. For example, there was regular trade, the Twa provided forest products and pottery and the Hunde agricultural products in return. But the Twa also filled permanent positions at the mwami’s court”.* (Series 1.1.2 interview, 2014, Masisi)

The distribution range of the *rwandophone* populations in the late pre-colonial and early colonial periods in North Kivu was largely limited to the eastern half of today’s Rutshuru territory as well as parts of Nyiragongo<sup>190</sup> and the city of Goma and it consisted of small agricultural and mixed agricultural-cattle-herding chiefdoms that were at least in part tributaries of the Rwandan Kingdom (author interviews with a member of a Hutu customary authority in Rutshuru, 2012; see also Chretien, 2006; Scott 2008 and Stearns, 2012). As highlighted earlier in this chapter, the *rwandophones* comprise traditionally cultivating Hutu and traditionally cattle-raising Tutsi and according to some classifications also the traditionally hunter-gatherer Twa. As the forests were progressively cleared, the Twa of North Kivu (as also those of Rwanda) became clients of the Hutu and Tutsi chiefdoms..

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<sup>190</sup> The distribution range of the *rwandophone* populations in North Kivu before the land acquisitions by the colonial settlers and the Congo’s administrative restructuring by the colonial authorities radically changed the socio-cultural, socio-economic and politico-administrative landscapes of the region is a politically highly controversial subject in North Kivu and the wider DRC. Statements with regards to the latter are oftentimes regarded as political statements. Political statements are not the purpose of this thesis. Nevertheless, it appears expedient to present the author’s research results in the frame of this thesis and only for the purposes of this thesis. They are certainly not authoritative as the author is not a historian. But both interviewee research with members of *rwandophone* and Hunde customary authorities (2012), researchers from the University of Goma (2007) and a local research institute from Goma (2007) confirmed what most renowned authors on the regional history including Willame (1997), Vansina (2004), Chretien (2006), Scott (2008) and Stearns (2012 and 2013) propose, namely that at the very least throughout much of the current Bwisha chefferie were occupied by *rwandophone* chiefdoms in the first decades of the 20th century.

When the colonial border demarcation became effective and Belgian colonial law was progressively imposed, the cross-border tribute relations were clipped and the *rwandophone* chiefdoms became self-sufficient (author interviews with a member of the Hutu customary authority in Rutshuru, 2012; see also Scott 2008 and Stearns, 2012), largely copying strongly simplified versions of the socioeconomic land tenure and political administration models of the Rwandan Tutsi Kingdom in the course. The latter consisted of a dual tenure system comprising one subsystem for cultivating (mostly Hutu) clients and one subsystem for cattle-raising (mostly Tutsi) clients.

The distribution range of the Nande comprised most of the northern territories Beni and Butembo, as well as small parts of northernmost Masisi, Rutshuru and Walikale. Within the Nande's distribution range there is a strong population concentration in the easternmost parts of Beni and Lubero as well as in some of the westernmost parts of Uganda's Western Region northeast of Lake Edward (DRC, 2005 and DRC, 2017). What was described earlier in this chapter as the *enlarged Nande community* comprises several distinct subgroups that some authors refer to as *clans* (see e.g. Bergmans, 1970 and Vyakuno, 2009), others as *tribes* (see e.g. Bergmans, 1970a; DRC, 2005 and DRC, 2017) and again others as distinct ethnic communities (see also the conceptual discussion on ethnic identity in the study area Subchapter 6.2).

As highlighted above, with the exception of the Babila that were traditionally mostly hunters, the (enlarged) Nande communities are by and large cultivators and most of the clans and tribes have been organised in centralised and hierarchically structured agrarian chiefdoms since pre-colonial times (Bergmans, 1970 and Vyakuno, 2009).

Thus, in the late pre-colonial and early colonial era, the densely populated eastern parts of today's North Kivu were politically organised into a varyingly densely-filled checker-board of more or less centralised agrarian chiefdoms of different sizes that ranged from individual small villages to relatively large areas such as those covered by the pre-colonial Bashu and Baswaga chiefdoms in Beni and Lubero as well as to somewhat lesser extents also those of the Bashali and Banyungu Hunde chiefdoms in Masisi. This checker-board of chiefdoms became less densely filled and less centrally organised as one travelled west, north-west or south-west

towards the lower lying transition regions of the Congo Basin, or north into the marshy parts of the Semuliki floodplains or again north-east into the high mountain ranges of North Kivu.

The diversity of chiefdoms and other indigenous political structures of the pre-colonial and early colonial periods also implied the existence of a very diverse list of land tenure systems (see also Vlassenroot and Huggins, 2005). Important within this context is that the colonially and post-colonially enforced restructurings and homogenizations of indigenous systems were largely limited to their politico-administrative designs. The indigenous land tenure systems were not targeted by the restructuring and were by and large, at least formally, left untouched (Boelaert, 1956 and Wauthion, 1959)<sup>191</sup>.

However, interviewed researchers and members of the Hunde customary authority have highlighted to me that the changes in customary administration that were brought about by the colonial authorities oftentimes also provoked changes to the customary land tenure systems of the affected populations. This appears only plausible as the modification of, for example customary jurisdiction boundaries via consolidations or secessions would have implied that customary clients that were not willing to move would become subjects of a different polity and its tenure systems. An interviewed Mwami from the Hunde authority in Masisi highlighted: *“substantial changes in the structure or even the hierarchy of a chiefdom exposes client populations at least temporarily to a level of tenure insecurity and incertitude”* (Series 1.1.2 interview, Masisi, 2012).

But the imposed changes in customary administration also led to a certain level of homogenisation of the customary land tenure systems.

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<sup>191</sup> It is important to stress here that the colonial authorities did not leave the land untouched. Quite to the contrary, land of interest to the colonial and postcolonial states was more or less systematically extracted from the so-called customary domain. But the customary land tenure systems that remained responsible for administering the remaining indigenous lands were, at least from a colonial vantage point, left untouched (see Boelaert, 1956 and Wauthion, 1959). However, as discussed in the study area Chapter 6 the system of the Congo's customary polities including most of the existing customary polities was substantially redesigned. This meant that many small chiefdoms were by decree integrated into larger chiefdoms whereas a small number of very large chiefdoms were broken up into smaller ones. In many cases where a chiefdom was integrated into another by force or, vice versa, where a chiefdom was disintegrated into smaller, units the land tenure system would have changed to reflect the design of the modified chiefdom and also the customs (and possibly also the interests) of the new chief (series 1.1.2 interview, Goma and Masisi, 2012).

Nevertheless, despite a noticeable homogenisation of North Kivu's tenure practises, interviewed representatives of both customary authority and peasant farmer organisations have highlighted that the contracts that define the customary tenure systems remain very diverse and oftentimes quite distinct even between different locations within the same chiefdoms. Thus, a Nande elder from Beni stated in an interview: “...it would require several doctoral theses like yours to grasp only the complexity of the land tenure system of the Nande community with all its subgroups and clans”. (Series 1.1.2 interview, Beni, 2012)

This is certainly not the purpose of this thesis. And hence I will settle for a simplified version that appears to capture at least the main elements of the most important land tenure relations (see Figure 13).

Despite the complexities and heterogeneities of North Kivu's customary land tenure systems, certain dominant patterns appear to materialise at least within the major agrarian chiefdoms. For example, a not exclusively, but generally valid principal pattern is that mostly usufructuary land rights as well as administration services are passed down a centralised hierarchical construction from a single chief (mwami) via numerous intermediate chiefs to peasant farmers. In the opposite direction flow fruits of the land, produce, artisanal products and different types of mostly manual services back to the mwami.

And given that it is the agrarian chiefdoms (and not the less centralised hunter-gatherer societies, shifting cultivators or the centralised but less territorially-circumscribed cattle-raising societies) that the Congo's colonial and post-colonial leaders decided to integrate into their politico-administrative under-structure<sup>192</sup>, it was also the tenure models of agrarian societies that came to dominate the recognised customary structures of the colonial and post-colonial states. As highlighted earlier in this study area Chapter 6, the demographically and spatially dominant agrarian societies of North Kivu are those of the Nande, Hutu, Hunde and Nyanga.

These societies have disposed and continue to dispose of political systems that are principally built on the dependency relations between landlords and land clients. In the pre-

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<sup>192</sup> See also the Subchapters 7.2.2 to 7.2.4 for additional elements on the integration of indigenous polities into the politico-administrative architecture of colonial and post-colonial Congo.

colonial past the clients obtained limited rights to use, income, exclude, transfer and enforce<sup>193</sup> land rights and they provided raised animals (such as goats or cattle), harvested goods and produce (such as beans and beer), manual work and military services in return. And, military services aside, the current customary systems continue to follow this broad model.

At the top of the system is the highest-placed customary leader, the *mwami*. *Mwami* signifies *king* in Kinyarwanda Kinande, Kihunde, Kinyanga, Mashi and many other Bantu languages of the region. One to several layers of intermediaries separates the mwami from the client farmers that till the land. The number of intermediaries is not so much defined by the ethno-tribal affiliation of a community, but rather by a chiefdom's geographic size, the quality of its land and the amount of the clients that the land bears. Ultimately, it is the complexity and efficiency of the administrative system that determines the amount of clients that a system can serve.

Thus, many chiefdom hierarchies may have comprised only one or two hierarchy levels with a few dozens or a few hundred client families in the early colonial decade. Larger chiefdoms such as the Bashu, Baswaga and Bamate Nande chiefdoms comprised several ten thousands of clients (series 1.1.2 interview, Beni, 2012) and the neighbouring kingdoms of Ruanda and Urundi are estimated to have comprised well over one million rural inhabitants in the early colonial period (Chretien, 2006).

For obvious reasons, these large chiefdoms required multiple levels of intermediaries whereas the Nyanga as well as most of the Hunde chiefdoms were relatively small until they

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<sup>193</sup> It is, amongst others, here that the complexity of the customary land rights system comes to play: In Western conceptualisations of property, these five rights, or "*property rights sticks*" are normally regarded as defining the rights that an individual or a collective can hold in land (see Honoré, 1993 and Harris, 1996). When asked to define the rights that their clients held, the interviewed customary authorities insisted that none of the bundle categories fully described the land rights that were transferred in the system. For example, the rights to use and income appeared to be similar to Western interpretations of the latter, but this counted less for rights to transfer, exclude and enforce. For instance, land could oftentimes be transferred, but only to heirs or only under certain conditions to non-family members or even non-community members. Western legal systems have taken several centuries to define, simplify, map out and streamline ownership rights for large-context and cross-society application. Formal Congolese law applies the same concepts as Western law, but Congolese customs do not. It is therefore difficult to compare the customary land rights with those of the formal-legal system, although there appears to be a slow but noticeable process of merging (Mastaki and Vake, 2009) as customary rights sometimes imitate formal rights and as rights scholars are attempting to integrate concepts from the customary systems into the formal system (see Boshab, 2007).

were reorganised in the administrative restructurings of the colonial and post-colonial systems, and before they were exposed to the substantial population growth that affected nearly all of North Kivu 's regions (though to very different degrees) over the last century.

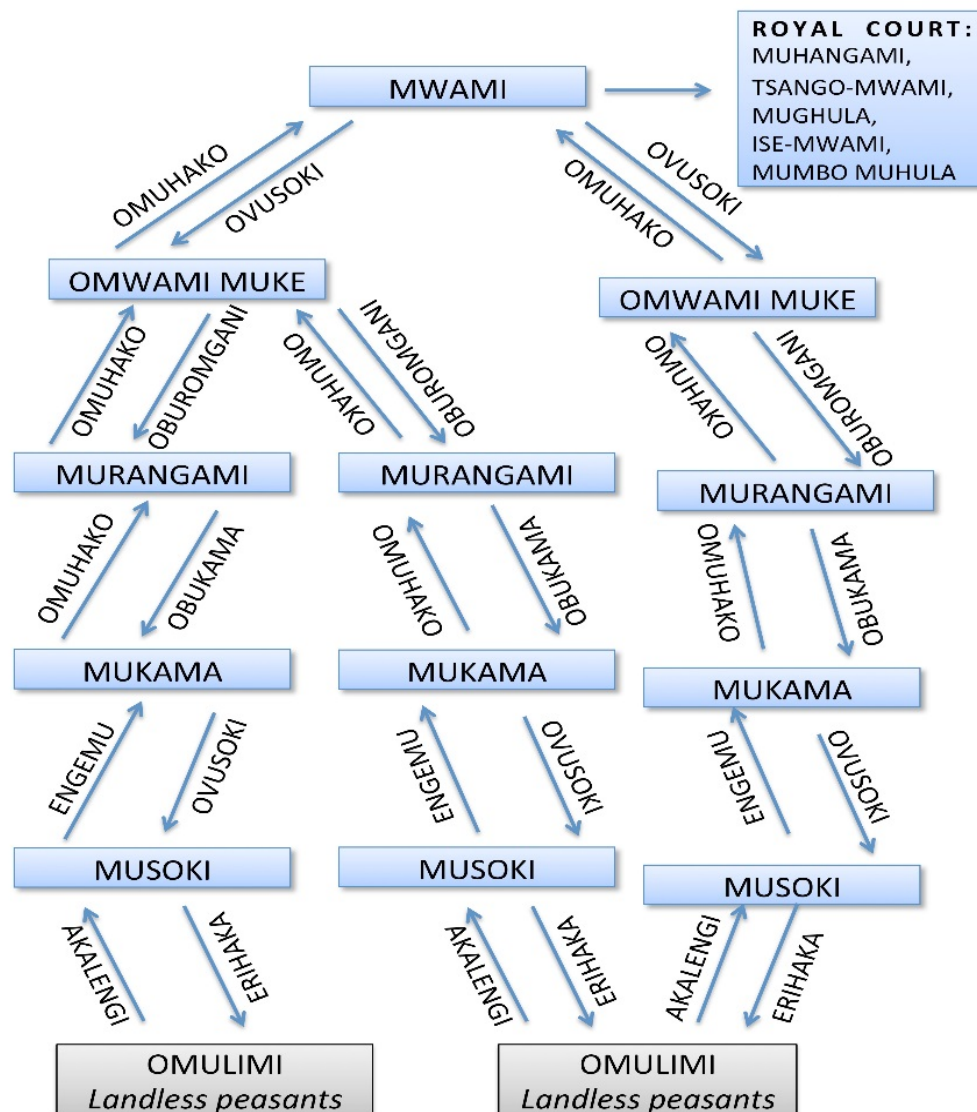
As the study area Chapter 6 tables indicate, most of North Kivu's large chiefdoms (the collectivites) now comprise several hundreds of thousands of inhabitants while the groupements comprise between approximately 3,000 and 200,000 (see the estimative population tables for the lower administrative sub-units in annex C). In this context relatively complex administration systems with multiple levels of hierarchy are required. Interviewed members of Nande and Hunde customary authority (2012 and 2014) pointed out that normally, each administrative level manages between five and fifty to eighty subordinates with the lowest levels managing the highest number of clients and the highest levels typically administering not more than five to ten or twelve subordinate authorities.

The above-cited numbers imply that North Kivu's chiefdoms that are now exclusively organised into groupements and chefferies contain between three and five hierarchical levels. And indeed, organograms drawn by interviewed Nande, Hutu<sup>194</sup> and Nyanga customary authorities reflected between three and five levels of hierarchy within their current chiefdoms. The following models (Figure 13 and Appendix B) are representations of hand-drawn organograms; the first of which represents the structure of the Nande community of Bashu in

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<sup>194</sup> It appears expedient to note that the customary land tenure system of the Bwisha Hutu chiefdom outlined in the organogram Appendix B by and large represents one pillar of an older and more complex system that appears to be no longer in use. According to series 1.1.2 and 1.1.3 interviews (Goma and Rutshutu, 2012; see also sources in the literature including Willame, 1997; Chretien, 2006; Scott, 2008 and Stearns, 2012) the Hutu chiefdoms of what is now the Bwisha collectivity in Rutshuru were for the most parts tributaries of the Rwandan Nyiginya Kingdom in the late pre-colonial and early colonial periods, and as such they were at least partially integrated into the latter's land tenure system until the colonial authorities dismantled cross-border tributary relations between the indigenous polities (see study area Chapter 6). The Rwandan system was a three-pronged system that collected tributes in the form of farm produce and manual labour from the farming populations that were by and large Hutu, and a distinct type of tributes, mostly in the form of cattle products (such as cheese, milk and cowhides) as well as military services from the cattle-raising Tutsi. This three-pronged system of *ubukonde*, *ubuhake* and *uburetwa* was abolished in Rwanda in the wake of the so-called *Social Revolution* of 1959 in which the Rwandan kingdom was to be dismantled (Chretien, 2006). Given that the tributary ties had already been clipped between the chiefdoms in Bwisha and the Rwandan king in the early 20<sup>th</sup> century (see Scott, 2008), the Bwisha systems seem to have evolved quite independently of the Rwandan system for nearly a century. This would partially explain why the customary tenure system in Bwisha appears to be limited to the *ubukonde* pillar of the formerly more complex system.

Beni (2012). Organograms for the Hutu community of Bwisha in Rutshuru, the Hunde of Bahunde in Masisi and the Nayanga of Walikale are presented in the Appendix B.



Conception: Interviewee from interview series 1.1.2 (2014) and Pottek (2017)

Data source: author fieldwork (2012, 2013, 2014)

**Figure 13.** Nande Community Administration and Land Relations Model (Organogram)

As illustrated in Figure 13, the mwami is the supreme holder of land rights in the chiefdoms. In the secular reality of formalised statehood, the legitimacy and power to hold and



delegate land rights to clients is chiefly derived from the mwami's recognition by the central state authority. The legal basis of this constellation is discussed in some detail in study area Subchapters 6.3 and 6.4. But the secular legitimacy reflects only a part of the spectrum and indeed, even the formal law of the DRC concedes that the legitimacy of the customary leaders to fill their position and exercise their power is anchored the ethno-tribal customs (see the discussion in study area Chapter 6; see also Boshab, 2007).

It appears that in the pre-colonial and early colonial periods the legitimacy to administer land and power was derived from higher (metaphysical or spiritual) forces. Indeed, interviewed customary authorities from the Nande, Hunde, and Hutu communities (2006, 2012 and 2013) consistently underlined that in their traditional mythologies the right to administer land is a divine right that is delegated to the mwami by spiritual beings. For the interviewed Nande and Hutu authorities (2006 and 2012) the divine being that delegated the rights was a god ("*Nyamuhanga*" for the interviewed Nande and "*Imana*" for the interviewed Hutu). For the interviewed Hunde the right to control land was delegated by the spirits of the bygone ancestors that are regarded as god-like beings. For both communities it appears that the transfer of this power is a collective undertaking by the spirits of the founders of the community.

For the Hunde and Nande, the transfer of the divine power to rule over land happens at a place that connects the material to the spirit world. The Hunde call this location *Lutsiba* in which, a Hunde mwami stated in an interview: "*...the heir to the throne must pass certain tests by which the Muhakabi and Shebakungu guardians of the custom determine the heir's legitimacy to the throne*" (Series 1.1.2 interview, Masisi, 2012).

And according to an interviewed member of the Nande customary authority, similar testing procedures exist in the Nande tradition, in which the mwami in waiting must demonstrate to the *Muhangami* and *Ise-Mwami* guardians of the custom "*that he is chosen by the ancestral spirits and therefore worthy of inheriting the throne*" (Series 1.1.2 interview, Beni, 2012).

Hence, a part of the customary legitimacy of tribal leaders appears to rest in a community's conceptualisation of the divine. But the interviewed Hunde and Nande

customary authorities (2012) conceded that the spread of Christianity, secular education, the administrative restructurings of colonial and post-colonial states, the formal nationalisation of all land, self-interested practises by customary leaders and years of migrations and conflicts have largely undermined the peoples beliefs into a divine source of customary power. At present, customary legitimacy and power is derived primarily from balancing tribal customs on the one side with the extremely diverse sets of interests and expectations of the client populations on another; and finally, last but certainly not least, also with the interests and prerogatives of the central state on which the mwami's secular rights to administer land ultimately depend.

Hence, it may be concluded that North Kivu's bami hold significant power vis-a-vis their communities and client populations. But this power is a delegate power that has progressively come to rest on the bami's cooperation with the central state. One of the aims of the following sections is to show that the dependency relation between the bami and the central state is bidirectional, even if the state is the senior partner in this relation. And what is more, this bidirectional dependency relation is not a recent phenomenon. It has been part of the Congo's design since its inception as a colonial dependency. An appreciation of this bidirectional dependency requires a glimpse into the colonisation histories, not only of that of the Congo, but also that of the African continent.

### **7.2.2 A Brief Excursion into the History of Colonisation and Spatial Rule in Africa and the DRC**

Contrary to widely held notions, the borders of the European colonies in Africa were not defined on the Berlin Africa Conference in 1884/ 1885. Instead, the Berlin Conference merely outlined in very broad terms the approximate spheres of interest of the individual conference participants and then set the regulatory terms for Africa's conquest. In this frame, the *principle of effectiveness* was established according to which territorial claims could only be upheld where territory was effectively colonised through the establishment of at least rudimentary infrastructures and some level of control over the territory. The required basic level of territorial control was to guarantee all European powers and companies a secure environment to do business.

However, there was substantial disagreement amongst the conference participants over the extent of territorial control required to validate territorial claims: the colonial newcomers Belgium and Germany pushed for heavy colonisation requirements whereas the colonial incumbents, England, France and Portugal opposed stringent rules as they saw their tenuously held African territories challenged by the newcomers, opposed. The compromise that was finally reached is defined by Articles 34 and 35 of the conference's Act:

Article 34: *“Any Power which henceforth takes possession of a tract of land on the coast of the African continent outside of its present possessions, or which, being hitherto without such possessions, shall acquire them, as well as the Power which possesses a Protectorate there, shall accompany the respective Act with a notification thereof addressed to the other signatory Powers of the Act, in order to enable them, if need be, to make good any claims of their own”*.

Article 35: *“The signatory powers of the present act recognise the obligation to ensure the establishment of authority in regions occupied by them on coasts of the African continent, sufficient to protect existing rights, and, as the case may be, freedom of trade and of transit under the conditions agreed upon”*. (Berlin Act, 1885)

Articles 34 and 35 of the act thus define the modalities under which territory could be claimed on the African continent. Whereas effective territorial occupation became a condition for entitlement, the compromise had it that merely Africa's coasts, of specific interest to extractive colonial trade, import, export and European travel, needed to be effectively controlled to legitimise a claim to a large and only vaguely defined colonial hinterland, the latter of which merely required some colonial presence (Lugard, 1965; Herbst, 2000 and Jackson, 1990).

The claims legitimization process as defined by the act resulted in a significant increase of fortified trading posts on the African coastlands from where the colonial powers then undertook expeditions into the continent's interior. Expeditions typically aimed to map the continent, establish political and commercial links with African rulers, sign treaties and acquire territory. A British colonial administrator described the territorial possession process in the following manner:

*“Treaties were produced by the cartload in all the approved forms of legal verbiage- impossible of translation by ill-educated interpreters. It mattered not that the tribal chiefs had no power to dispose of communal rights or that those few powerful potentates who might perhaps claim such authority looked on the white man’s ambassador with contempt. The Sultan of Sokoto, for instance, regarded the subsidy promised to him by the chartered company (author’s note: in exchange for territorial rights) as a tribute from a vassal” (Lugard, 1965, page 17).*

Wherever local treaties could not provide the grounds for territorial division, the signatory powers delimited their spheres of interest by straight lines based on geographic coordinate system measurements. The fact that colonial borders were only in rare cases modified and have been widely translated into the postcolonial and current geopolitical contexts has it that until this day nearly half of Africa’s interstate borders represent more or less straight lines.

Many contemporaries and historians were baffled by the effectiveness of small European armies at conquering the vast African continent. In this context, a number of Western inventions particularly in the realms of medicine (Malaria prophylaxis) and military technology (fully automated guns and industrial weapon production scales) proved material in the furthering of European military gains. The British historian and colonial contemporary Michael Crowder (1976) noted that the most astonishing feature about colonisation was the small size of the invading armies in comparison to those of the African kings and tribal chiefs. The disequilibrium in numbers is largely explained by the simple fact that at least in military engagement terms one colonial soldier operating a Gatlin or Maxim gun that fired 600 rounds per minute outweighed dozens and at times hundreds of artisanal-armed African warriors. With only small armies and logistic back-ups to finance, the financial costs of colonisation were limited. And indeed, Berman and Lonsdale (1992) estimate the costs of military conquest per conquered individual at 15 pence for the British colonial authorities.

Before the background of the low financial and human costs of conquering Africa, Jeffrey Herbst (2000) has coined the expression *conquest on the cheap*. This conception does not only refer to the low costs of waging wars against African polities but also, and maybe even more so, to the low cost that the conquering powers incurred as a result of the low levels of competition amongst themselves. Despite the historically high readiness of European

powers to wage war over even minor disagreements on national boundary trajectories and other issues (before 1945), colonial wars over African borders were extremely rare. Instead, the African borders were established based on a tenuous presence on the ground and on political arrangements negotiated in distant European capitals.

Thus, contrary to the logic of European state-building, where, at least in the pre-World War II arena, national border locations reflected the spatial extent to which a state could de facto and in the face of its rivalling neighbours broadcast its claim to physical control over a territory and its inhabitants, Africa's colonial borders defined the spatial extent to which a colony was contractually entitled to develop the capacity to broadcast physical control.

The decision by African state leaders and African interstate organisations such as the Organization of African Unity (OAU) and African Union (AU) to inherit the colonial borders have, despite early hopes of creating strong African nation state analogs to their European role models, produced a postcolonial continuity in the logic of the *conquest on the cheap*.

Historical (colonial) and recent wars such as the US-led Afghanistan and Iraq wars, but also the Rwandan-led AFDL and RCD-wars, have illustrated that open wars are often readily won and territory is easily gained by technologically superior armies and effective military administrations. However, historical and recent wars including those cited above have also shown that gained territory is not at all easily held and effectively occupied and controlled through technological and (external) administrative superiority. To the contrary, gained territory can only be effectively controlled where a local political administration can be established that is willing to represent and cooperate with the conquering power.

According to the statutes of the Berlin Act, after claim delimitation, the colonial powers were forced to achieve some level of administrative control in order to perpetuate their claims to African territory as outlined in Articles 34 and 35 of the Berlin Act. In the few examples showcased by Algeria, Kenya, South-West Africa, Southern Rhodesia and South Africa, where valuable farmland and/or mineral resources generated a significant level of settler interest from the European *métropoles*, administration-building based that leaned on European immigrant populations and the existing models from the *métropoles* was more or less straight-forward as it could follow established patterns. Without large settler populations,

administrative capacity building presented a substantial challenge. In a few cases, the colonial states compensated their own limited resources by delegating administrative tasks to metropolitan companies<sup>195</sup> with commercial interests in the respective regions. But by and large on the continental scale, both European settlement and commercial interests remained minimal and the grip of the colonial states remained feeble.

In this logic, Coquery-Vidrovitch (1992, page 185) noted with regards to the Belgian Congo that “*White soldiers and administrators were too few to establish colonial rule in the bush...*” Before this background, it appears legitimate to extend Herbst’s (2000) notion of a *conquest on the cheap* to the notion of an *administration on the cheap*.

This however, does certainly not mean that the colonial states adopted a light-handed laissez-faire policy towards their African subjects. Quite to the contrary: the colonial states to varying degrees attempted to compensate their weak presence on the ground by determined and hard-handed policies of subjugation. In this context, Young (1997) serves the image of the *Bula Matari*, i.e. the *crusher of rocks* in describing the colonial state in the Congo. In the worst expression of colonial rule, the Belgian administration of the Congo Free State at least facilitated and oversaw what amounted to mass enslavement of indigenous populations in colonial rubber plantations, which inspired Joseph Conrad (1899; 2002) to his famous political novel and political statement against slavery and colonization *The Heart of Darkness*.

Outside of colonial settlement areas and areas of concentrated economic or strategic interest, i.e. in most of Africa, the colonizing powers were forced to revert to alternatives to compensate for administrative weakness and establish some level of control on the ground.

Contrary to popular notions of a wild and untamed continent, a large number of polities with varying, but often significant levels of local control existed throughout Africa. Based on its nearly 300 years of experience as colonial ruler in India, the British Empire readapted what it regarded as a major colonial success story from India, namely a time-tested indirect rule system that had preserved its rule over the Indian country-side in the course of several

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<sup>195</sup> The *Compagnie du Congo Belge* for example administered much of the interior of Belgian Congo whereas the British South Africa Company administered Southern Rhodesia. These are some of the most notorious examples of company rule in Africa, but smaller examples abounded particularly in the early decades of colonial rule.

centuries. Whereas the French and Portuguese policies of the day envisioned transforming their colonies into extensions of their own nation states<sup>196</sup> the complex social, political and environmental realities on the ground ultimately forced all colonial administrations, including the French and the Portuguese, to progressively adopt systems of indirect rule at least on a de facto basis. In this context, the former British colonial administrator Frederick Lugard (1965) noted that it was precisely the European incapacity to directly control the countryside that *peu à peu* convinced all colonial administrations to extend their rule via incomplete but nevertheless manifestly existing indigenous systems of political control into the African hinterland. Consequentially, in many occasions, indirect rule materialized much less in a programmatic manner than rather in a haphazard fashion so as to meet the *métropole*'s shifting economic and political interests and goals.

These interests were often blurred and could be summarised as balancing a level of control that validated the colonial territorial claims before the judging eyes of rival European powers on the one side and protected the colonies' often limited commercial interests in their territories on the other. It was in this context that in most African colonies, only alliances with indigenous rulers provided the colonial powers with any noticeable level of rural presence on the ground. This was also the case in the Belgian Congo, as well as, at least to an important degree, in the Belgian Congo's postcolonial successor states (Tull, 2005).

Consistent with the commonly loose interpretations of the statutes of the Berlin Act, the direct influence of the colonial states in Africa was largely confined to the coastal regions, the capital cities, a small number of river ports and fortresses at strategic economic, political and military crossroads and a number of resource intensive locations that were able to financially compensate the colonial state and its commercial representatives for the required administrative investments. And it was primarily in these places that colonial settlements, colonial infrastructures and direct administrations were installed. In the Belgian Congo, it was chiefly the areas around the colonial capital Leopoldville (Kinshasa), the mineral-rich regions

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<sup>196</sup> France initially attempted to install a direct rule system that had many tribal chiefs in the French colonies deposed and replaced either by European administrators or by trained indigenous state administrators. However, realizing that state administrators lacked legitimacy at the grassroots level, France progressively reverted to something that resembled the British and German and later also Belgian and Portuguese systems of indirect rule (Herbst, 2000).

of Kasai and the mineral-rich and agriculturally potent regions in Shaba/ Katanga and a relatively narrow mountainous stretch along Lake Kivu in today's provinces of North and South Kivu.

According to authors such as many post-colonial states in Sub-Saharan Africa reproduced this model of highly selectively applying direct administration and leaving the rest to indirect administration mainly via existing customary structures (see e.g. Herbst, 2000; Jackson, 1990 and Tull, 2005). The key asset that allowed this indirect rule system to function was farmland. And the following paragraphs will demonstrate how the process of appropriating land and integrating the customary polities into the administrative structures of the state and thereby into the logic of indirect rule operated in the Congo Free State, the Belgian Congo and their postcolonial successor states. The following paragraphs will also speak for themselves in showing how these intrinsically connected processes of land appropriation and administrative integration helped to prepare the ground for many of today's rural conflicts over land and social identity in North Kivu.

### **7.2.3 Land Appropriation, Land Rights Formalization and the Effects on Land Ownership and Land Use in North Kivu**

The roots of the DRC's current legal system including its land code lie deeply embedded in Belgian colonial law, and thereby ultimately in the Belgian adaptation of the French *Code Napoleon* (Boshab, 2007). The connective link between the DRC's and the Belgian legal codes lies in the European appropriation of the land that comprises the territorial confines of today's DRC via the Berlin Conference Act of 1885. Via the Conference Act, the Belgian King Leopold II had secured a mandate over the Congo Basin east of the Congo River for the Belgian registered corporation *International African Society* (*Association Internationale Africaine*). This corporation was ultimately owned and controlled by the Belgian King and his family (see Wauthion, 1956; Niemz, 1998; Hochschild, 1999 and Asiane and Yuma, 2004).

The stated goal of the Berlin Conference with regards to the land that was earmarked as a Belgian colony was for the *International African Society* to transfer the ownership rights



to the colony over to the Belgian state for annexation<sup>197</sup>. However, bowing to royal pressure, the Belgian parliament refused to ratify the transfer, of which it was not favourable in the first place, thereby effectively allowing King Leopold II to acquire a territory eighty times the size of the state of Belgium as his personal fiefdom. The entity became to be known as the *Congo Free State* (*État indépendant du Congo*). The Congo Free State was a state recognised by what came closest to an *international state system* during the closing decades of the 19<sup>th</sup> century, namely by the main European and North American powers that were all signatories to the *General Act of the Conference of Berlin* in 1885. Hence, the Congo Free State was a recognised state of the international system. And it was simultaneously a private possession of King Leopold II's charter company, the *International African Society* (Hochschild, 1999; Asiane and Yuma, 2004).

Less than five months after the Berlin Conference had attributed most of today's DRC to King Leopold's company, i.e. less than five months after the *International African Society* had taken possession of the territorial realm of today's DRC, the company formally took possession of all unoccupied, i.e. so-called *vacant* land via article 2 of the charter's first decree on land of July 1<sup>st</sup>, 1885. The latter states that "*vacant land must be considered as belonging to the state*" (quoted in Vlassenroot and Huggins, 2005; p.122; see also Boelaert, 1956, pp. 3).

The second article of the charter's first decree resembles the early legal codes on indigenous property administration by other Berlin Conference signatory powers including those of France (see the *Bulletin officiel du Gabon-Congo*, of November 20th 1864, p. 57, quoted in Boelaert, 1956, pp. 12) and Germany (see the German Imperial Ordinance of November 26<sup>th</sup> 1895, quoted in Boelaert, 1956, pp. 12). However, several authors such as Boelaert (1956) and Wauthion (1959) also highlight that an important difference between the Free State's property code and those of France's, Germany's and Great Britain's African colonies lay in the fact that indigenous lands were explicitly recognised and defined in the legislations of the latter powers. The Belgian crown's decree of 1885 and those that followed in 1889 and 1892 never defined what actually constituted *vacant* land and they thereby left a legal void that was particularly easy

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<sup>197</sup> See the *General Act of the Conference of Berlin concerning the Congo*, 1885; available at <https://ia601701.us.archive.org/13/items/jstor-2212022/2212022.pdf>

to exploit by colonial authorities, investors and settlers in search of land for their own enterprises. In this context, both Boelaert (1956) and Wauthion (1959) highlight that the second article of the Congo Free State's first decree effectively limited the indigenous property rights to restricted *usus* rights and that it thereby lay the legal groundwork for massive land expropriations in those regions of the Congo that were of commercial or other interest to the European colonisers during the first 23 years of European rule.

In 1908 the *International African Society's* brutal mismanagement of the Congo Free State<sup>198</sup> caused the Belgian parliament to bow to growing international pressures and force the company's transfer into public ownership, leading the Belgium state to annex the Congo Free State and Belgium to become a colonial power in Africa (Boelaert, 1956; see also Asiane and Yuma, 2004). The newly created colonial state (the *Belgian Congo*) was Belgium's only formal colony in Africa<sup>199</sup> and between 1908 and 1910 its new status and administrative organisation were defined in the Colonial Charter of 1908 and a set of decrees and ordinance laws including the first decree of 1910 that attempted to systematize the administrative relations between the colonial state and its indigenous subjects (Boelaert, 1956; and Wauthion, 1959).

The most important modifications to the administrative status quo via a 1910, in which were that firstly, the indigenous administrations were identified and formally integrated into the colonial administration and that secondly, indigenous property ownership received some degree of formal recognition.

Whereas for some authors the integration of indigenous structures into the administrative architecture of the colony inscribed itself into the twin logics of a "co-

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<sup>198</sup> It appears expedient to add a brief note that the *International African Society's* administration of the Congo Free State is oftentimes cited as one of the most brutal examples of colonial rule that facilitated forced labour and widely practised corporal punishments of forced labourers including floggings, forced amputations and killings on massive scales (see e.g. Nziem, 1998; Hochschild, 1999 and Asiane and Yuma, 2004). According to some estimates (see e.g. Nziem, 1998 and Hochschild, 1999) the 23 years of the *Society's* rule over the Congo Free State have directly or indirectly caused the premature deaths of several million indigenous colonial subjects (the highest of these estimates cites up to 13 million directly and directly violence-induced deaths under the *Society's* rule; see Nziem, 1998).

<sup>199</sup> The neighbouring, initially German colony of Ruandi-Urundi was to become a Belgium-administered League of Nations/ United Nations Trust Territory after the German loss of its *Deutsch Ostafrika* colony during the First World War.

*management of common interests*” and administrative development assistance (see e.g. Wauthion, 1959, pp. 18), for others, it was part of a strategy of extending the sovereignty and territorial control of a notoriously weak colonial state into the challenging rural countryside of a very large and underdeveloped geographic realm (see e.g. Herbst, 2000). For again others, the integration of the tribal and chiefdom-based administrations served more than anything to isolate the colonial state elites from potentially looming class conflicts with the rural poor via an integration of the customary structures into the formal administration system as an insulation layer between the colonial state and the rural masses (see e.g. Boone, 2014)<sup>200</sup>.

The second principal novelty that was introduced by the colonial legislations of 1908, 1910 and 1919 was a rudimentary version of a three-pronged land tenure system that recognised state ownership, private ownership and some, although still rudimentarily and loosely defined indigenous land ownership. The law thereby attributed a more pronounced jurisdiction over tribally used lands to the customary administrations, as it recognised these as an integral part of its own administrative architecture. Colonial settlers and investors could now no longer simply acquire land from members or leaders of indigenous communities as each transaction of this type required the approval of the relevant colonial administration’s district officer, who, in turn, was required to cooperate with the indigenous administrations (see Boelaert, 1956 and Wauthion, 1959).

However, the following paragraphs will show that the new regulation did not preclude the massive appropriation of land by colonial settlers and investors in certain commercially or otherwise attractive rural settlement hotspots such as the Virunga and Mitumba mountains and floodplains of eastern Kivu. But it certainly provided some more or less stable framework within which the colonial state could control and keep track of the land appropriation processes. And what is more, the early, rudimentary three-pronged domain system established itself as a model for future colonial and postcolonial land tenure systems including the DRC’s

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<sup>200</sup> See also the conceptual discussions of land tenure and administration systems in the lights of political realism and historical materialism in Subchapter 2.3; a discussion of the purposes and effects of integrating the indigenous structures into formal state administrations will also be resumed in the results discussion Chapter 7 and the final conclusion.

currently effective one. The latter has inherited several of its predecessor's strengths, as well as some of its most deplorable weaknesses.

As highlighted above, the administrative legislations of 1908 to 1910 provided a framework for state control over land transfers between members of indigenous communities and settlers, but it was certainly not devised to preclude these transfers. Indeed, a historical legacy with ongoing impact on land tenure conflicts and inter-communal relations in North Kivu is linked to the scale, scope and practise of land appropriation, nationalization and privatization by colonial authorities, most of which occurred (at least in North Kivu) several decades after the promulgation of the relevant legislations, namely between the late 1920s and mid 1950s.

In North Kivu, this colonial land appropriation had two principal pillars: These were firstly, colonial land appropriations chiefly for agricultural, but also for mining and urban construction activities and secondly, land appropriations for preservation purposes, i.e. chiefly for the establishment of the Virunga National Park (PNVi).

Whereas the Belgian Congo as a whole attracted comparatively low numbers of European settlers and the colony's white population reached a mere 108,000 inhabitants and thereby less than 1 percent of the Congo's population total at its peak (Wauthion, 1959), the fertile soils and mild climates of the Mitumba and Virunga ranges drew a disproportionately high share particularly of agricultural settlers to the Kivu region (Wauthion, 1959; Willame, 1997; Bucialimwe-Mararo, 2001 and Tull, 2005). Indeed, Kivu became well renowned beyond its region as a prime location for agriculture, tourism and mineral exploitation during the final decades of the colonial period (Vanthemsche, 2012).

The colonial authorities had recognised the agricultural potential of the Kivu region at an early stage and had chosen to facilitate the settlement of white farmers in the hope of scaling up and commercialising agricultural production. Hence, it was in this context that in 1928 the colonial charter company *Comité National de Kivu* (CNKi) was created. The CNKi was to serve as a pool for state-appropriated (*nationalised*) land that was earmarked for sale to Belgian and other European settlers. And the CNKi's relative successfulness finds expression in the following numbers: Within two years of its incorporation, the CNKi administered over

800,000 hectares of land throughout the Kivu region (Bucyalimwe-Mararo, 2001), which includes today's North Kivu, South Kivu and Maniema, and by 1958 it had transferred ownership rights to 17,880 clearable lots to colonial settlers (Bucyalimwe-Mararo, 2001). And the large majority of this land lay in the fertile eastern (Virunga and Mitumba) mountain ranges, lake shores and floodplains of North and South Kivu (DRC, 2005; see also Bucyalimwe-Mararo, 2001).

One result of this large-scale land transfer was that up to 40 percent of the farmable land in the territory of Masisi and roughly 20 percent of that in the neighbouring territory of Rutshuru as well as important, though much smaller percentages of land in Nyiragongo, central Beni, southern Lubero, eastern Walikale (North Kivu) and Kalehe, Kabare and Uvira (South Kivu) had been incorporated into colonial plantations, pastures and farms when the Congo declared its independence in 1960 (Bucyalimwe-Mararo, 2001; Tull, 2005).

The second element of large-scale land appropriation in North Kivu is linked to the creation of the first national park on the African continent, the *Parc National Albert* (that was renamed the *Parc National de Virunga* (PNVi) in the course of the authenticity movement of the Congo's Second Republic). With a surface of 20,000 hectares, the *Parc National Albert* was initially a comparably small park, created by a royal decree of April 21<sup>st</sup> 1925 by the Belgian King Albert I as a reserve in the Virunga Mountains to protect rare plant species and large mammals such as apes and elephants from excessive hunting and to create a destination for nature tourism modelled on the American Yellowstone National Park (Chevalier, 1934). Throughout the following 25 years, however, a series of royal decrees increased the park's size until it reached its current dimensions of 790,000 hectares in 1954.

In the course of several of the PNVi's successive enlargements the colonial authorities expelled resident populations from the future parklands. In formal-legal terms, however, there were very few actual expropriations because the lands that were incorporated into the park were by and large lands that had been declared as *vacant* and therefore state property. The status of formal *vacancy* however, oftentimes did not reflect the realities in the ground, because population growth and population movements had long surpassed and out-dated the earlier defined statuses of indigenous lands and vacant lands (Nzabandora, 2005). Hence, in

many cases expulsions of indigenous populations were simply viewed as expulsions of squatters and therefore not subject of more complex legal processes of formal expropriation.

In this context the individual acts of (informal) expropriation and expulsion are only weakly documented in the colonial literature (Nzabandora, 2005), so that their extents can only be vaguely estimated in retrospect. Nzabandora (2005) has proposed a rough extrapolation based on fragmentary data from diverse sets of colonial and customary documents and oral accounts and he estimates that several ten thousand farmers were expelled for the enlargement of the PNVi from areas in northern Rutshuru and eastern Lubero alone. In the context of one act of enlargement in the late 1930s, Nzabandora (2005) cites the case of the colonial administrator of Lubero Van Den Vries, who is said to have ordered the forceful evacuation of over 2,400 Nande families from confiscated parklands in southern Lubero on one single occasion. The expelled Nande populations from southern Lubero were then by and large resettled in Rutshuru's Bwisha *chefferie* where many found employment on colonial coffee plantations. However, Nzabandora (2005) and author interviews with members of interviewee groups 1.1.2 and 1.1.4 suggest that the colonial state-orchestrated expulsion and resettlements of the 1930s and 1940s spawned conflicts over land in many of the affected regions.

Since its final delimitation in 1954, the PNVi runs in a north-south extension along North Kivu's eastern boundaries with Uganda and Rwanda and it is now quasi-contiguous with the Semuliki National Park, the Ruwenzori National Park, the Queen Elizabeth National Park, the Bwindi Impenetrable National Park and the Mgahinga Gorilla National Park in Uganda, as well as with the Volcanoes National Park in Rwanda. The park extends over sections of five of North Kivu's six territories, namely the south-easternmost tip of Masisi, most of Nyiragongo, central and parts of eastern Rutshuru, the easternmost section of Lubero and eastern Beni. It comprises most of the (Congolese half of the) Ruwenzori mountain range, the upper (southern) areas of the Semliki flood plains, the lower (northern) areas of the Rwindi and Rutshuru plains, most of the (Congolese half of the) Virunga mountain range including all of the Virunga's five major volcanoes that are situated in the DRC, as well as a narrow strip of the easternmost section of the Mitumba mountain range.

In spanning much of the Virungas, much of the alluvial plains and small sections of the Mitumbas, the PNVi encompasses some of the region's most fertile farmlands and as such, it has been coveted as a farmland destination for decades<sup>201</sup>. And despite all attempts by national authorities and international preservation organisations to preserve the PNVi in its natural state, the park is under heavy stress from illicit exploitation activities including poaching, logging, artisanal mining, agriculture and cattle-herding as well as from illicit settlements (see e.g. Mastaki, 2005; see also Aveling et al, 2014)<sup>202</sup>. And, more importantly for the purposes of this thesis, the park, its delimitation and the access rights to its resources remain at the centre of a major controversy with important impacts on both the relative land and resource scarcity as experienced by a large number of North Kivu's rural residents and the disputes and conflicts over land tenure that are at least partially driven by these.

As a section conclusion, it appears expedient to highlight that the colonial land appropriations for privatization and preservation purposes have extracted almost half of the most suitable lands out of the customary land domains in North Kivu (Wils et al., 1986; Mathieu et al. 1999 and Bucialimwe-Mararo, 1990). And some of the most colonial expropriation-affected areas of North Kivu are also some of the most land tenure conflict-

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<sup>201</sup> Since 1954, the PNVi covers 7,900 square kilometers of some of the best farmable lands in proximity of some of the region's highest rural population densities. The PNVi is quasi entirely located in the province of North Kivu (less than 3 percent of the PNVi are located in the Ituri province). But there are also two other national parks that straddle North Kivu's southern and western borders with neighbouring provinces: the Kahuzi-Biega National Park covers a total of 6,000 square kilometers of which roughly 1,000 are located in North Kivu whereas the remainder mainly in South Kivu besides a small section in Maniema and the Maiko National Park covers nearly 11,000 square kilometers more or less evenly divided between Maniema and Tshopo province and a relatively small section of roughly 1,000 square kilometers in North Kivu. Whereas the PNVi was established in the colonial period, the other two parks were created in the early 1970s. The Maiko National Park is mostly located in an extremely thinly populated area of the Congo Basin and the Kahuzi-Biega Park touches both thinly populated areas in the Congo Basin and densely populated areas in South Kivu's Mitumba mountains. The densely populated areas that surround the easternmost parts of the Kahuzi-Biega National Park are located in South Kivu's Kabare chefferie of the Shi community. Some of these latter areas have been exposed to similar contestations over park boundaries and resource access within parklands as the PNVi adjacent areas in northern Rutshuru and southern Lubero (see e.g. Kasisi and Brown, 2009).

<sup>202</sup> Several more or less recent interviews with two representatives of the ICCN and a member of the WWF in Goma (2012 and 2014) have stressed the fact that ever since the wars of the mid 1990s and early 2000s, protecting the resources of the park has been an uphill battle even if, as the Virunga National Park initiative as well as a joint mission report by the UICN and UNESCO cautiously highlight, certain progress with regards to rebuilding park infrastructures, protecting individual animal species such as apes and elephants and integrating park proximal populations into controlled and managed park resource exploitation programs appear cautiously promising (see Virunga National Park, 2017; see also Aveling et al, 2014)).

affected areas (this applies particularly to the Masisi, Rutshuru and Nyiragongo territories; see also Mathieu et al. 1999 and Bucialimwe-Mararo, 2001).

However, this observation should not suggest that a direct, decades-spanning causality chain exist between colonial land appropriations and present-day tenure conflict. The discussion and comparison of the fieldwork results with relevant works in the existing literature in Chapter 3 will show that the colonial administration's land tenure related policies and practises constitute only one, although very important, element in the contemporary universe of land tenure conflict in North Kivu.

#### **7.2.4 Indigenous Administrations, the Central State and Claims to Autochthony**

As highlighted on several occasions throughout the thesis, customary authorities continue to hold important socio-cultural, administrative, economic and political functions in North Kivu and the wider DRC. From certain vantage points (see e.g. Platteau, 1996, Benda-Backmann, 2002 and Boshab, 2007) this appears only coherent with history as long-grown customary systems appear to have predated their so far relatively short-lived colonial and post-colonial successors and have certainly played key roles in forming the norms, customs and traditions of the rural populations. As the conceptual discussion on property rights and legal systems in Chapter 2 has highlighted, legal systems and their codes and regulations tend to be largely built on the local customs that predate them. For formerly colonised states that have imported significant parts of their legal systems from distant places and their cultures, it appears to make sense to integrate home-grown elements that reflect more closely the traditions, norms and practises of the local populations into their legal systems (Benda-Baeckmann, 2002).

To some authors, integrating customary politico-administrative units into the state apparatus represents a reflection of this logic (see e.g. Boshab, 2007)<sup>203</sup>. And indeed, the integration of customary units into colonial and postcolonial administrations has been widely

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<sup>203</sup> As briefly discussed in conceptual discussion Chapter 2 and the study area Chapter 6, very different interpretations of the logic behind the integration of these units exist. A discussion of different views on the integration processes and their logic will be resumed in the thesis' main discussion Chapter 7.



practised throughout Sub-Saharan Africa (see e.g. Baldwin, 2016). But it would be far-fetched to conclude that the existing customary societies of North Kivu and many other areas in Sub-Saharan Africa represent mirror images of their pre-colonial past. Certainly, elements of continuity exist, as do elements of discontinuity. With regards to North Kivu, it is worthwhile to note that the continuities and discontinuities are far from evenly distributed between the province's ethno-tribally defined societies.

For instance, there are time-tested examples of customary rule in North Kivu from the so-called *grand nord* region that includes the two territories of Beni and Lubero. Examples include the Bashu Nande chiefdom of Beni. Bashu is headed by the Nande Mwami Abdoul Kalemire III and his clan has ruled over the Bashu chefferie in a reasonably stable manner for several generations (Bergmans, 1970). The Bashu chefferie comprises seven groupements, each of which is headed by a Nande clan, of which most are connected via family ties to the grand chief Mwami Kalemire III. Furthermore, researchers in anthropology (see e.g. Bergmans, 1970), national statistical estimates (DRC, 2005) and my interviews with farmers and members of traditional authority (2012) alike suggest that the large majority of the population within the Bashu chiefdom is currently identifying, and has most likely for generations identified with the Nande community. Thus, one farmer illustratively stated:

*"... everyone here is Nande, I am Nande, my parents are Nande and our ancestors were all Nande, my wife is Nande, our neighbours are Nande, our priest is Nande, our mwami is Nande and even our police and our mai-bobo (bandits) are Nande. We have different clans, but we are all Nande. We fight over land and all kinds of things. But we don't fight over who we are, where we belong or who our mwami is. These things we know..."* (Series 2.1.1 interview, Beni, 2012).

This statement appeared to have been formulated with a smirk to other parts of North Kivu that have been imbibed in social identity conflicts for decades. But the statement was also voiced in a very reflective and simultaneously humorous manner; and it appeared to reflect the local realities on the ground. Congruent statements such as the following substantiated this impression:

*"We have had good and bad chiefs in our locality and the groupement. During the RCD-KLM reign some of the chiefs cooperated with the party cadres, sold our community's land and went to travel to Uganda; but the grand mwami protected us,*

*he reigned in the corrupt chiefs or forced them to resign. He has a lot of influence. And his lineage has always been there...*” (Series 2.1.1 interviews, Beni, 2012)

Hence, it appears that traditional rule and customary structures have been relatively stable in the Bashu chefferie over a considerable amount of time, and, it appears worthwhile to note, significantly longer than the succession of the Congo’s central states including the Congo Free State, the Belgian Congo, the Frist and the Second Republic. It also appears that a certain continuity of customary rule has lasted generations despite the powerful influences of colonisation, colonial administrative reorganisations, Christianisation, decolonisation, decades of rapid population growth, years and decades of conflict and massive forced population displacements and the passing of four central states. Whereas the Bashu chefferie appears to be a case in point for a stable reign, the Baswaga Nande chefferie of Lubero territory (Bergmans, 1970a) has experienced almost comparably stable conditions of customary rule over more than three generations.

However, it should be noted that whereas the two cited cases from the northern territories’ Nande chiefdoms do not stand alone as examples of relatively long-term stable customary rule, they are certainly not representative of customary rule in North Kivu and the wider DRC in general. In many cases, internal strife over succession, territory or other issues, colonial and post-colonial meddling with customary affairs, hierarchies and lines of succession, administrative restructurings of the central state apparatus and its rural politico-administrative understructure, unstable neopatrimonial favouritism at the central state level, violent conflicts and population migrations have repeatedly altered and modified the customary societies, their political structures, and their leading personnel (including, in some cases, the composition of the customary nobilities). It is particularly in the most conflict-affected areas of Masisi, Rutshuru and Nyiragongo that some of the most radical changes have taken place, many of which were exogenously imposed.

For example, several cases in which customary units were newly created, dissolved or in any way modified or where customary authorities were either deposed or put into office by colonial or post-colonial authorities are well documented in the literature. For example, shortly after the Belgian state formally took control of the Congo and a rudimentary administrative theory was formulated of how to rule over the immense territory and integrate the indigenous

hierarchies into the slowly consolidating administrative architecture of the state, the colonial authorities undertook to identify the indigenous structures and the elites that presided these so that they could serve the new order as intermediaries of colonial rule (see Herbst, 2000; Tull, 2005 and Prunier, 2008). Wherever strong, territorially consolidated chiefdoms existed that were inclined to cooperate with the colonial power and serve its nascent indirect rule system (such as in the above-cited cases of the Bashu and Baswaga chefferies in the Nande-dominated areas of northern North Kivu), the task was more or less straightforward. But in all the other cases it was not (see Tull, 2005 and Prunier, 2008).

In the course of the construction and consolidation of the colonial state's indigenous administrative under-structure in the southern territories of North Kivu several existing more or less territorially well-defined entities were combined and consolidated, whereas some were dissolved and again others newly created. This process of colonial administrative engineering is well resumed in the history of the Hunde chiefdoms in Masisi, as, for example, a Hunde elder related:

*“When the Congo Free State took possession of the Congo in 1885 there was initially very little interaction between the whites and the Hunde. This changed with the establishment of the Belgian Congo: The borders were traced, Belgian military camps were established along the borders with German East Africa and the local administrative boundaries were drawn. In 1916 the Belgian authorities forced the Bashali and Banyungu chiefdoms as well as several smaller Nyanga chiefdoms in Walikale into one administrative unit and installed the Bahunde chief Mwami Andre Kalinda as the chief mwami over the new construction. Hence, Andre Kalinda became a very powerful mwami. But he also had enemies in the Hunde and Nyanga communities that were jealous and discontent about their own relegation. In any case, Kalinda's over-dimensioned Bahunde chefferie was later subdivided on several occasions, first the colonial authorities split Bahunde into two chefferies: Bahunde and Banyanga with Mwami Andre Kalinda at the head of Bahunde in Masisi and Mwami Nkubiri Ngulu at the head of Banyanga in Walikale. But this only repeated history as now formerly independent Hunde chiefs were still under the rule of the Kalinda whereas the Ngulu clan ruled formerly independent Nyanga chiefs. There were several more restructurings under Belgian rule and after independence; the last major one was under Mobutu in 1977. At present, we have three grand Hunde chiefs, two in Masisi and one in Rutshuru. In Walikale, the Banyanga chefferie was abolished; to my knowledge, it never had much support amongst the populations or the tribal chiefs apart from the ruling Ngulu clan. Hence, at present there are no more grand chiefs in Walikale, but rather 15 secondary chiefs. In today's administrative context, the grand chiefs are the chefs*

*de chefferie whereas the secondary chiefs are the chefs de groupement.* (Series 1.1.2 interview, 2012).

In returning to the brief historical contextualisation, it appears expedient to note the following: Shortly after annexing the Congo from the *International African Society*, the Belgian authorities established the *International Boundary Commission* with its eastern colonial neighbours *German East Africa* and the British *Protectorate of Uganda* to avoid confrontations over ambiguous borders and to sort out and reign in potential cross-border expansionism by indigenous subject polities. One early Belgian concern was apparently the consolidated, centralised and comparably strong Kingdom of Rwanda, which exerted a substantial level of control over tributary chiefdoms mostly inside, but also outside of *German East Africa* (see e.g. Vansina, 2001; Chretien, 2006; Scott, 2008 and Stearns, 2012).

According to coherent interview (series 1.1.2, 1.1.3, 1.4.2 in Goma and Rutshuru, 2012 and 2014) and literature (Scott, 2008 and Stearns, 2012) sources, the Rwandan tributaries included a chiefdom headed by the Tutsi Mwami Nshizirungu in Jomba (in the north of today's Bwisha chefferie) and a chiefdom closer to the centre of today's Bwisha chefferie that was headed by the Hutu Mwami Katchuki, as well as possibly several smaller units that were dispersed throughout today's eastern Rutshuru and Nyiragongo territories. Thus, an interviewed Hutu elder highlighted:

*“Several smaller Hutu chiefdoms existed in the current Bwisha chefferie in North Kivu; and Jomba, which is now part of Bwisha, was headed by a Tutsi chief. These regions were to my knowledge never part of the Rwandan Kingdom, but there existed tributary relations for the usage of land, so there was political dependency.”* (Interview series 1.1.2, Goma, 2012).

It appears that convoluted tribute and other political dependency relations between distant chiefdoms and lower-ranking units were common in North Kivu and throughout the Great Lakes region. After the final tracing of the borders between the German and Belgian colonies by the *International Boundary Commission* the Belgian authorities undertook to dismantle cross-border tributary relations and to stifle any potential expansionism on the side of the Rwandan kingdom (see e.g. Kraler, 2005; Chretien, 2006 and Scott, 2008). In this logic, the authorities consolidated the eastern chiefdoms including those of Jomba and Bwisha into

one large chiefdom, the Bwisha chefferie. In breaking with its own policy of ruling through established traditional leaders, the colonial power designated a young Hutu from Bwisha named Daniel Ndeze, of whom no prior roots in customary nobility are recorded, as the chief mwami of the large and newly consolidated Bwisha chefferie (Scott, 2008 and Stearns, 2012)<sup>204</sup>.

Initially, the Bwisha chefferie was designed to extend over the entire territory of Rutshuru, despite the fact that Hunde communities populated its western half. Conflicts between the Hunde and Hutu populations and Hunde resistance to the colonial authorities then led to the creation of the Bwito chefferie under the Hunde Mwami Kasindikira as well as the Kumu chefferie in today's Nyiragongo territory (Scott, 2008; Stearns, 2012).

As still today, the Kumu chefferie disposed of an ethnically heterogenous population mix of mostly Hutus, but also a substantial number of Kumu, Hunde, Tutsi and Twa. The locally important community of Kumu had migrated to the region north of Lake Kivu in the late pre-colonial and early colonial decades from the eastern parts of today's Maniema and Tshopo provinces. When the colonial authorities recognised the Kumu chefferie in 1920, they designated a customary leader from Tshopo, Mwami Kahembe, as its chief (Stearns, 2012). Mwami Kahembe had two wives, a Hutu and a Tutsi. The eldest sons of each of these two wives (Bigaruka and Butsitsi) each engendered a clan. And the two clans have been engaged in at times violent struggles over the mwami position ever since. Indeed, the struggles over customary power in the Kumu chefferie deliver the script for many popular anecdotes on royal power struggles in southeastern North Kivu. For example, one history-versed community representative of Nyiragongo related:

*"The history of the Kumu chefferie reads itself like that of mideaval British royalty with violent deaths through unexplained accidents, stories of witchcraft and documented murders at gun point. After the Kumu chefferie's founder Kahembe resigned at the end of the colonial period, nearly all of the incumbents and heirs to the throne have suffered premature deaths."* (Series 2.3.8 interview, Goma, 2012).

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<sup>204</sup> According to some sources (see Stearns, 2012) Daniel Ndeze was simply selected for the mwami position because he was a trusted advisor and translator for the colonial authorities.

In drawing a brief conclusion from the excursion into the history of North Kivu's customary chiefdoms, it appears important to note that customary authority in North Kivu is in some cases rooted in many generations-old family or clan lineages, centuries-old traditions of spiritual beliefs, cultural practises, customary leadership and secular power; but in many cases it is also the product of a relatively recent, and sometimes very rational-bureaucratically designed logic of political rule. This however, does not necessarily imply that colonially or post-colonially fabricated customary structures are void of traditional legitimacy: even seemingly arbitrarily installed customary leaders such as Daniel Ndeze of Bwisha were required to legitimize their roles by adopting and defending the customs of the local communities which they came to preside if they were to remain in power and pass the customary reign on to their progeny.

Indeed, the case of Daniel Ndeze of Bwisha showcases how initially seemingly arbitrary customary legitimacy was created and accumulated over time. And in many cases, once established, customary legitimacy served to create a stable base of power and influence: the Ndeze clan has been repeatedly cited as one of the most powerful customary clans of the DRC with a deep rooting in the rural population base of Bwisha and a significant amount of influence vis-à-vis the central state in Kinshasa, as well as vis-à-vis the bygone RCD-Goma rebel state during the years of rebel rule (see e.g. Tull, 2005).

### **7.2.5 Ethnic Identities, Autochthony and Related Claims**

Hence, it appears manifest that despite external interferences, customary authority in North Kivu tends to have a strong rooting in a community's socio-cultural identity, its norms, customs and traditional beliefs. But at least since the arrival and imposition of western-modeled formal-legal state structures, customary authority is also deeply rooted in the strategic interests and far greater capacities of the colonial and postcolonial states, the interests and capacities of the central state elites, the central states' tactics of day-to-day politics and even the interests and capacities of private and other non-state actors.

Nevertheless, one of the key points that the fieldwork for this thesis has brought out is that North Kivu's customary administrations including most of those that were established, redesigned or otherwise significantly modified by the colonial and postcolonial authorities

continue to play central and possibly in the short to mid term irreplaceable roles in the administration of North Kivu's rural areas and their populations. At least in North Kivu, but likely also in many other places of the DRC and beyond, it appears as no understatement to posit that customary structures remain the backbone of the rural administration and by consequence, ultimately also of the state.

But customary society certainly constitutes no polaroid-image of the Congo's pre-colonial societies. Given much more than a century of both systemic and sometimes erratic interference with customary structures, linages and geographies by the colonial and postcolonial authorities, it appears at least questionable how the customary politico-administrative polities, their structures, compositions and geographies should serve to define statuses of autochthony for the DRC's ethnic and ethno-tribal communities. But it is exactly this link between customary administration and autochthonous status that Congolese law (implicitly) and many local opinion-leaders in North Kivu and elsewhere in the DRC (explicitly) attempt to create.

As highlighted in the previous paragraphs it is impossible to establish authoritative truths not only about who was where first, but in many cases also about the character of a local presence before it was formalised. And, as highlighted in the previous paragraphs, once formalised, the local presence no longer reflected the pre-formalisation presence because the formalisation process itself substantially modified that presence as it followed the external logic of the colonial state.

Apart from the discussed references to the ethno-tribal politico-administrative geographies of North Kivu and the DRC, the second most common legitimization base for autochthony claims relies on oral traditions by local populations and historically documented references to the local presence of an ethnic community in the pre-colonial and early colonial documentations of explorers, missionaries and anthropologists that attempted to grasp the ethno-tribal diversity of the Congo, as well as those of Belgian administrators that sought to construct alliances with local chiefs and later to integrate these into the architecture of the colonial state.

But as Vansina (1990), Chretien (2006) and also Prunier (2008) highlight, the extremely heterogeneous and also very dynamic ethno-tribal composition of the Congo largely escaped the observational and analytical grids of the foreign observers that installed themselves in the region. In fact, the wholesale approach to the creation of identifiable territorial customary entities that oftentimes led straight into some of the *culs de sacs* and other curious outcomes described in the previous discussion Subchapter 7.1 can be read, at least partially, as a consequence of the colonial authority's incapacity to read and understand the indigenous population distributions and the socio-cultural and political lines and patterns that defined and distinguished the individual communities from another.

And, as ongoing controversies in North Kivu not only over the recognition of autochthony statuses, but also over the recognition of simple ethno-tribal statuses suggest, the task of identifying ethno-tribal communities remains highly controversial until this day. The brief discussion of long-standing and ongoing controversies over recognised ethno-tribal identities and statuses in Subchapter 7.2.1 has well illustrated the elements involved in conflicting practises of recognising anywhere between 7 and 22 indigenous ethnicities for North Kivu alone. The difficulty of the task lies partially explained in its very character and it is therefore systemic: As has been extensively emphasised in the conceptual discussion Chapter 2, there are many different qualifiers by which individuals and social groups define ethnicity, both for themselves and for other individuals and groups. The outcome of the process (of defining ethnicity) depends on the observer's accentuation of these qualifiers, and therefore also on the motives that drive the accentuation (of the different qualifiers) and the definition (of ethnicity). And, indeed, North Kivu is a case in point for this methodological problematic.

For example, it was highlighted in the conceptual discussion Chapter 2 that four small-in-stature hunter-gatherer communities exist in North Kivu: the Kango, the Asua, the Efe and the Twa that all speak very distinct Bantu languages. Interviewed (2012) members of the Twa and Efe communities emphasised that there are few commonalities between these four groups and that they would never consider themselves part of the same community. However,



administrative practise in the DRC and common references by non-members of the groups typically refer to the latter conjointly as *Pygmies*<sup>205</sup>.

A likely more familiar example is that of the Hutu and Tutsi as well as, to a lesser extent also that of the Twa on a second level. The Hutu, Tutsi and Twa of North Kivu are, by and large, Kinyarwanda-speakers. For many observers, this quality distinguishes them as one ethnic group, the rwandophones. Other observers undertake a subdivision and refer to three distinct groups, namely the Hutu, Tutsi and Twa. In analogy to the external designations, most of North Kivu's Hutu, Tutsi and Twa would refer to themselves distinctly as Hutu, Tutsi and Twa whereas some members of the Hutu and Tutsi communities refer to themselves jointly as rwandophones. But again, many Hutu and Tutsi that live in the Bwisha chefferie refer to themselves as *Banyabwisha*, thereby linking their ethnic identity to the place in which they reside and the chiefdom community with which they associate. The most illustrative evidence for this tendency was that a very large majority of all questionnaire survey respondents from survey locations in the Bwisha chefferie marked their ethnic affiliation as *Banyabwisha* and their language as *Kinyabwisha* on the questionnaire.

The same counts for Hutu and Tutsi from the Kumu chefferie, of which many refer to themselves as Kumu. Similarly, in my questionnaire survey of 2012 many respondents from firstly the Bwisha chefferie identified their native language as *Kinyabwisha* and most respondents from the Kumu chefferie identified theirs as *Kikumu*. In contrast, by the measures of nearly all interviewed non-group members, *Kinyabwisha* is identical with *Kinyarwanda* and the *Banyabwisha* are, indeed, members of the *rwandophone* community, which non-group members oftentimes referred to as *Banyarwanda* or outright as *Rwandais*. *Banyarwanda* means *people of Rwanda*, and on a secondary level, the designation implies that the *Banyarwanda*, *Banyabwisha* and many of the Kikumu-speaking people of North Kivu are *allochthones* and *foreigners (étrangers)* that have no permanent right to reside in the DRC.

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<sup>205</sup> The term "Pygmies" is oftentimes used to describe small-statured hunter-gatherer populations" The designator comprises ethno-linguistically very distinct communities and it should therefore not be viewed as an ethnic designator. Nevertheless, it appears expedient for several different purposes to group these socio-culturally highly communities into one same category. For the purpose of this thesis, the designator "Mbute" will be used to describe this category. The term "Pygmies" is regarded as derogatory by some community members (series 2.1.1 interviews, Goma, 2014).

Other members of the Kumu community underline their own “ethno-specific” *authothony* saying that they are the “real” Kumu that draw their roots to the migration of Kumu people to Nyiragongo from an area in the province of Maniema. For example, one interviewee claimed:

*“We are the real Kumu. Many Hutu and Tutsi of Nyiragongo just say that they are Kumu and that they speak Kumu. They really speak Kinyarwanda, or, at best a Kinyarwanda -Kumu mix. They call themselves Kumu because they want to sound like they are autochthones for political reasons”* (Series 2.1.1 interview, Nyiragongo, 2012).

And indeed, this latter statement reflects a view that appears to be widely held throughout the so-called *autochthonous* communities of North Kivu. A substantial number of interviewed questionnaire survey respondents from these communities went several steps farther than the above statement in stressing with apparent vigour and conviction that all Kinyarwanda-speakers are foreigners that have no place in the DRC. This view is possibly best illustrated by a quote from a young Hunde farming cooperative representative in southeastern Masisi:

*“All the Rwandans are Rwandans whether they call themselves rwandophones, Hutu, Tutsi, Bwisha or Banyamulenge. They are Rwandans and they do not belong here.”* (Series 2.1.3 interview, Masisi, 2012).

Examples of controversies around ethnic identities are legion in North Kivu although none of the other examples are as politically charged as those that imply the social identities of supposed or real speakers of Kinyarwanda. Nevertheless, the list of controversial ethnic and ethno-tribal identities is long. It could be extended to the Kano community of Walikale, of which some clans refer to themselves as Lega whereas others refer to themselves as Kano while most Lega from South Kivu appear to refer to all of North Kivu’s Kano jointly as Lega. Some interviewees have suggested that the differences over the designators are mostly linked to competitions over political resources between different clans of the Kano and Lega communities, whereas others suggest that the designators describe two distinct social group identities.

For example, each individual from a small group of questionnaire survey respondents from a Kano minority community in a research location in Walikale marked their ethnic

affiliation on the questionnaire form as *Kano* and their mother tongue as *kano*. When interviewed (series 2.1.1 interview, Walikale, 2012) after the survey sessions, the interviewees affirmed very clearly that they were Kano and that the Lega are a related but nevertheless very distinct ethnic group from Kalehe in South Kivu. One of the interviewees stated:

*“...our Lega brothers are our brothers. But our Nyanga, Hunde, Tembo and Kusu brothers are our brothers, too. The Lega speak a language that we understand. They are brothers. But we are Kano.”* (Series 2.1.1 interview, Walikale, 2012)

Independently (informally) interviewed members of the urbanised Kano/Lega community in Goma that I regularly frequented insisted on several occasions that the Kano are simply Lega that call themselves Kano. One member of the group stated:

*“The Kano are as Lega as I am. You are German even if you live in Goma or Quebec. The Kano always said that they are Lega. They just want to be Kano now because they have their own groupement and they have their minerals and their own mayi-mayi group<sup>206</sup>. They have their own interests but they are not an ethnic communit.”* (Series 2.4 interview, Goma, 2014)

Other examples where ethno-tribal identities are contested stem from the two northern territories of North Kivu, i.e. Beni and Lubero. These two territories are, by most accounts of interviewed members of the Nande community (2012), almost exclusively populated by Nande. Indeed, several interviewed questionnaire respondents from Beni highlighted that the ethno-tribal identity conflicts of Masisi, Rutshuru, Nyiragongo and Walikale are foreign to the so-called *grand nord* region of North Kivu simply because here as a survey respondent claimed in a follow-up interview “...everyone here is Nande...” (Series 2.1.1 interview, Beni, 2012).

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<sup>206</sup> The interviewee was referring to the fact that Kano customary authority is heading a groupement in Walikale, that there are important cassiterite deposits in that groupement and that a mayi-mayi militia group in which a lot of Kano youth are engaged are controlling some of the mineral deposit sites. These statements appear to represent a reasonable reflection of the reality on the ground, but the interviewee did not explain in which way these apparent realities would embolden the Kano to claim an undeserved ethno-tribal status and thereby ultimately undermine the latter's legitimacy. A possible insinuation is that the access to minerals, a groupement and an armed group provides the Kano a status of power that in their eye justifies their claim to an identity. It is not clear. But in any case, the objection appears a worthwhile quote because it highlights the different levels on which controversies over social identities can be played.

And this ethno-demographically Nande-dominated image of the so-called *grand nord* region was, until fairly recently, also reflected in government documents, according to which the Nande community comprised the near totality of the population of the two territories (see DRC, 2005).

This however, contrasts sharply with more recent ethno-demographic estimates (DRC, 2017), by which the Nande comprise only 36 percent of the population in Beni with the remaining 64 percent divided between the Bambuba, the Watalinga, the Bapakombe, the Balese, and different communities of Mbute. Similarly, more recent surveys of Lubero's ethno-demographics estimate the Nande component at 90 percent and the remaining 10 percent divided between Pere, Mbute and Hutus (DRC, 2017).

The conclusion of these observations serves to underline a series of statements made about ethnicity in the conceptual discussion Chapter 2, namely that ethnic identities and ethnic statuses are extremely malleable and fluid. As documented throughout this Chapter 7, North Kivu serves as a particularly strong example of ethnic malleability, fluidity and dynamism. From this vantage point, a logic that would link an inherently static concept such as autochthony to a conspicuously dynamic concept such as ethnicity appears questionable. But amongst large parts of North Kivu and the wider DRC's population, there exists a manifest urge to define autochthony based on just that, ethnicity and ethno-tribal territoriality (see e.g. Young, 1976; Young, 2007; Lemarchand, 2007; Prunier, 2008 and Young, 2012).

For some communities such as the Hunde of Masisi and western Rutshuru, but to lesser extents also the Nyanga and Tembo communities of western Masisi and eastern Walikale this urge appears at least partially driven by grievances over radical changes by which these communities have lost robust ethno-demographic majorities, access to farmland and, from the perspective of interviewed Hunde peasant representatives in Masisi (2012), also territorial control in regions that they perceived as their ethno-tribal homelands and within which they now feel socially, culturally, economically, politically and also militarily marginalised<sup>207</sup>.

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<sup>207</sup> Militarily marginalised here means that many Hunde deplore the presence of rwandophone militias such as the FDLR and the Nyatura as well as FARDC military units that are dominated by officers and rank and file soldiers of the rwandophone groups in the areas of Masisi and Rutshuru, which the Hunde regard as their traditional

This widely prevailing feeling amongst the Hunde, Nyanga and Tembo populations is possibly best illustrated by the preamble of the 2010 statement of an active Hunde-dominated militia, the *Alliances des patriots pour un Congo libre et souverain* (APCLS), which unambiguously reads: “*We, the indigenous Congolese from Masisi, Rutshuru and Walikale in North Kivu province, denounce the Machiavellian plan to exterminate (the people) in the land of their ancestors*” (quoted in Stearns, 2012, pp. 17).

For an understanding of the ethno-demographic, socio-political and geopolitical contexts that have given rise to the strong feelings of marginalisation amongst the communities in question, it appears expedient to briefly review the most important events in colonial and post-colonial history that have formed these contexts. But as many, if not all historical caesura, the historical events described in the following paragraphs have created multiple dimensions of reality of which the reading that is represented in the previous paragraph’s APCLS quote, is only one, even if it represents an important example that describes a widespread feeling within a distressed community.

### **7.2.6 Mass Migrations, Autochthony and Conflicts over Land and Social Identities**

The southern four territories of North Kivu and particularly the Masisi and Rutshuru territories have been more strongly affected by a series of four types of dramatic events than

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homeland region. Many of the interviewed Hunde (author interviews with peasant farmers, agricultural cooperative representatives and a mid-ranked customary authority in Masisi and Goma (2006, 2012 and 2014) claimed that rwandophone militias and also rwandophone soldiers routinely become involved with conflicts over land tenure and social identities in rural North Kivu. From the perspective of most of the cited interviewees the maintenance of Hunde militia such as the APCLS represents the only means available to the Hunde community to defend their interests vis-à-vis the militarily much powerful rwandophone communities. But it should also be noted that author- interviewed (2006 and 2012) peasant farmers and cooperative representatives of the rwandophone communities used the same arguments to justify the presence of rwandophone militias in the regions within which they resided. The rwandophone groups are jointly demographically, economically and politically much more powerful than the Hunde, but they do not act as a coherent force. In fact, rwandophone militias, guerrillas, rebel armies and FARDC units oftentimes fight one another over conflicting economical and political interests and goals as well as over internal ethnic cleavages that mostly oppose the Tutsi and Tutsi-allied Hutus to a majority of Hutu groups. Other conflicts oppose so-called *immigrant Hutu* groups such as the *Front Démocratique pour la Libération du Rwanda* (FDLR) to locally more established so-called *Congolese Hutu* groups such as the Local Defense Forces (LDF) and sometimes also the Nyatura. For further detail on the armed groups in North Kivu see the main discussion Chapter 7. The main point to draw from this excursion however, is that many Hunde in North Kivu feel that they are being marginalised, squeezed out, and, as the above quote demonstrates, even exterminated.

most other regions of the Congo. The first two types of events were discussed in Subchapters 7.2.3 and 7.2.4: they were linked to the policies of land appropriation and administrative redesign by the colonial state and to the way that the postcolonial state managed this heritage.

The colonial state had extended its rule over the territorial realms of the Congo at least in part by integrating customary polities into its politico-administrative under-structure and in the process it substantially changed and redefined the customary polities. Secondly, the colonial state had expropriated the indigenous populations and transferred much of their lands to private owners and state assets such as the Albert/ Virunga National Park. In several locations, the land expropriations and the administrative engineering provoked conflicts over land tenure and social identities amongst the indigenous populations. These policies and their effects particularly affected the southern territories of North Kivu because due to their suitable geographical location in proximity to neighbouring countries and navigable waters, their favourable climates and fertile soils, these regions were of particular interest to the colonial settlers and state authorities.

As will be highlighted in the results discussion Chapter 7 of the thesis, the post-colonial state aggravated the tensions over land tenure and social identities by continuing and at times accelerating the redesign of customary entities according to its own interests and by dealing the former colonial state assets out to its cronies and neopatrimonial clients, providing little to the rural populations in return.

The third and fourth types of events that radically transformed the socio-cultural, socio-political, socio-economic and geopolitical realities of North Kivu (and once again, the province's four southern territories were at the epicentre of the events) were ultimately linked to one another: The third type of events comprised three waves of mass immigration from Rwanda into North Kivu and adjacent regions and the fourth type comprised two interstate wars that were at least partially triggered by ethno-political tensions and resulting rebellions in North and South Kivu.

As briefly pointed out earlier, North Kivu's four southern territories, and particularly Masisi and Rutshuru have been affected by radical ethno-demographic changes via colonially orchestrated immigration movements, UNHCR-facilitated refugee immigration and sporadic

waves of more or less uncoordinated immigration waves mostly from the neighbouring country Rwanda (and to much smaller degrees also from Uganda and Burundi).

The first of these massive immigration movements commenced in 1937, when the Belgian colonial authorities assigned the district commissioner Ron Spitaels the mission to organise the resettlement of indigenous Rwandans from draught and land scarcity affected regions in the Belgian League of Nations Protectorate Ruanda-Urundi into the Belgian Congo. The resettlement mission was implemented as a follow-up to a series of colonial metropole-mandated studies according to which Rwanda disposed of an excess population of approximately 145,000 people, whereas the adjacent Kivu region of the Belgian Congo was considered under-populated and also understaffed with regards to manual labour for the growing number of colonial farms and agro-enterprises (Spitaels, 1953).

The so-called *Mission d'Immigration de Banyarwanda* (MIB) evolved into a massive colonially-orchestrated immigration movement of (mostly Hutu) Rwandans into North Kivu's territories of Masisi, Rutshuru and Nyiragongo, as well as into South Kivu's Kalehe and into a small number farming and mining locations in the Maniema and Katanga provinces. An important element of the MIB settlement program for ongoing inter-community relations in North Kivu was that the Belgian authorities had offered to create a chefferie in the Congo for the populations that participated in the transplantation program to the Rwandan King Mwami Rudahigwa that facilitated the administration of the migration movement. Hence, in 1937 the Gishari chefferie was created with the cooperation of the Rwandan king and the most senior customary authorities of the Hunde community in the Belgian Congo, i.e. the Bahunde Mwami Andre Kalinda (see also the quotes by Hunde authorities in this section and the works of Bucialimwe-Mararo, 1990)

The Gishari chefferie comprised an area of 47,810 hectares inside the Bahunde chefferie and according to Stearns (2012) the colonial state had purchased the latter for a total 7,000 Belgian francs in 1937, which translates into a monetary value of roughly \$22,000 USD in 2017 (Stearns, 2012). This represents a miniature amount with regards to the actual value of the transacted land. But it may be reasonably suggested that it constituted a substantial amount for Mwami Andre Kalinda at the time. In any case, an interviewed authority from the Hunde community stated:

*“All parties involved in the MIB project enormously profited from the latter at the expense of Masisi’s Hunde populations: The colonial authorities and colonial settlers gained a pool of manual workers, the Rwandan immigrants received access to farmland and employment opportunities, the grand Hunde chief of the time Mwami Andre Kalinda received a financial reimbursement for the land that probably suited his needs and interests of the moment and the Rwandan Mwami Rudahigwa extended the reach of his tributary realm into the Belgian Congo<sup>208</sup>; while the Hunde community was deprived of some 47,000 hectares of Masisi’s best farmlands and Masisi filled up with Rwandans.”* (Series 1.1.2 interview, Masisi, 2012)

The actual number of Rwandans that immigrated into the Belgian Congo between 1937 and 1957 is unknown, as the colonial MIB authority undertook no head-counts of the resettled individuals. However, the resettled families were counted and according to the colonial commissioner (Spitaels, 1953) that was charged with the mission, a total of 38,576 families had been resettled into the Belgian Congo by July 31<sup>st</sup> 1953. The same report (see Spitaels, 1953) criticized that the MIB program had outgrown its own potential as it provoked conflicts over land and social identities with local resident populations in the Kivu region.

The report of 1953 led to an swift scaling down of the program and to its termination by early 1957 (Willame, 1997 and Stearns, 2012). The total volume of the Rwanda-to-Congo immigration is impossible to gauge not only because of the lack of a head-count, but also because, as Spitaels (1953) highlighted, many more Rwandans had informally accompanied the MIB resettlement program than those that were actually part of it, and they informally settled inside and outside of the Gishari chefferie, and mostly throughout the territories of Masisi and Rutshuru. Whereas at least initially, the Rwandan immigrants were very much welcomed as new land clients by the local customary authorities of the Hunde community, they were progressively perceived as rivals by the Hunde clients with whom they competed for land.

Several African (see e.g. Bucialimwe-Mararo, 1990) and Western (see e.g. Willame, 1997 and ICG, 2005; Tull, 2005; Kraler, 2005, Prunier, 2008 and Stearns, 2012) scholars have

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<sup>208</sup> According to Stearns (2012) and interviewed peasant representatives and customary authorities from the Hunde community (2006 and 2012) the Rwandan Mwami Rudahigwa was deeply involved in the project to the extent that he even selected the customary chief (first Mwami Bideri and later, Mwami Bucyanayandi) and the personnel that was to administer the Gishari chefferie.



estimated the number of Rwandans that immigrated into North Kivu during the active period of the MIB anywhere between 150,000 and 300,000. And by the late 1950s the effects of the MIB program had spawned the implementation of a new migration management program, namely the *Migration Indigènes et Paysannats* (MIP) of which the purpose was to deal with the unresolved consequences of the MIB program, namely to coordinate the remaining informal immigrant streams, re-settle some of the recent transplantees away from the dissolved Gishari chefferie, prevent densely populated areas from further demographic pressure and alleviate the rising tensions over farmland, social identities and political influence in Masisi and western Rutshuru (Nzabandora, 2005, Vlassenroot and Huggins, 2005).

With regards to the Gishari chefferie it appears expedient to note that the chefferie was dissolved at the end of the MIB program and returned to the Hunde community under Mwami Andre Kalinda in 1957 as inter-communal conflicts around the chefferie abounded. An interviewed witness to history offered his interpretation of the events:

*“The reintegration of Gishari into the Bahunde chefferie was the colonial authority’s direct response to the arrogance of the installed Tutsi chief Bucyanayandi who behaved like a ruler right in the heart of the Hunde community lands. But the Belgian response was also part of larger, regional processes. Firstly, when the Belgians abandoned the Gishari chefferie they had already been switching their alliances in Rwanda from the Rwandan king Mwami Rudahigwa to the Hutu conservatives around Gregoire Kayibanda. The Belgian Catholics changed their African preferences from the “noble Tutsi monarchs” to the “god-fearing Hutu peasants” and parallel changes happened with regards to the Congo. But what was even more important was that in the wake of rising Hunde resistance to the Gishari chefferie the Belgians started to fear popular uprisings in a situation where their rule over the Congo began to look shaky. They attempted to get rid of the sources of trouble. But the trouble was already there and there was no way back”. (Series 1.4.3 interview, Goma, 2012)*

Hence, in 1957 Gishari was formally reintegrated into the Bahunde chefferie from which it was once again split to be melted into the newly created Bashali chefferie in 1977. The same astute eyewitness interpreted the events in the following manner:

*“Mobutu tried to break the power of the chiefs with his law 73-015 that abolished customary rule in 1973 and installed the chiefs as regular formal state agents that were obliged to rotate between district offices. That did not work, in large parts of*

*Kivu and elsewhere: The chiefs resisted and the law was abrogated. But there were customary figureheads to that resistance and Mwami Andre Kalinda was an important one of them. Together with Mwami Ndeze of Bwisha, Kalinda simply stayed home and continued to run his chefferie without a state mandate. When Mobutu was forced to acknowledge his political defeat and reinstall the chiefs he took revenge on some of their figureheads. Kalinda and the Bahunde chefferie paid dearly: they lost more than half of their land and their people. And this is how Mwami Sylvestre Bashali advanced to his chef de chefferie position in 1977. He had been chief of a groupement in the Bahunde chiefdom since the mid 1950s before all this happened. But he was also the eldest of the Bashali clan. The Bashalis were one of the two main Hunde clans before the Belgians arrived and they had always contested the advancement of Andre Kalinda to a higher authority than their own. In fact, when Mobutu could not get directly at Kalinda, he got at him via a rivalling clan. Mobutu did exactly what the Belgians had done before him” (Series 1.4.3. interview, Goma, 2012).*

As highlighted in the above quote, the creation of the Bashali chefferie required the promotion of a formerly second-line customary authority, namely Mwami Sylvestre Bashali, to the chief of chefferie, i.e. the mwami position. This was undertaken in the frame of a larger administrative restructuring during the mid-period of the Second Republic (*Zaire*) between 1977 and 1979.

A central take-away from this excursion into the history of southern North Kivu is that an agriculturally highly fertile area near the middle of what many Hunde describe as the “*heartland of their culture*” (series 2.1.1 interviews, 2014) became a (demographically) Hutu dominated area in the course of a colonial-authority orchestrated act of ethno-demographic and politico-administrative engineering within only two decades, and just before the Congolese achieved its independence from Belgium. Throughout the decades that followed the creation and dissolution of the Gishari chefferie, the areas surrounding the latter have remained hotspots of conflicts over land and social identities between Kinyarwanda and Kihunde-speaking populations until this very day.

And what is more, the immigration wave that was associated with the MIB program was only the first, although by some accounts (see e.g. Stearns, 2012) the most socially devastating of a series of three major waves that originated in Rwanda during the 20<sup>th</sup> century. And all of the latter had the Masisi, Rutshuru and Nyiragongo territories of eastern North Kivu as their destination.

Only two years after the MIB program was terminated, the Rwandan Parmehutu movement headed by Gregoire Kayibanda triggered the so-called *Revolution Sociale* in Rwanda, purged members of the Tutsi community from positions in the Rwandan administration and coordinated massive acts of ethnic violence and killings in the Rwandan countryside. Hence, only two years after the colonial state-orchestrated immigration program, ethnic violence caused an immense second wave of migrants that this time consisted nearly exclusively of members of the Tutsi community and that comprised an estimated 60,000 people (see UNHCR, 1964; Willame, 1997; ICG, 2005 and Tull, 2005).

Slightly more than half of these Tutsi refugees were installed in a UNHCR camp on formally vacant land that was acquired by the UNHCR from the Hunde customary authorities at a significant distance from the Rwandan border near the village of Bibwe in a less densely populated region of the Bahunde chefferie in western Masisi<sup>209</sup>. A UN report of 1964 (UNHCR, 1964) documents how within only four years of the flight from Rwanda the refugee dependency rate had tumbled to a few thousand as most of the refugees had integrated the local customary land markets, entered land tenure contracts with the Hunde chiefs and were farming their lands or herding their cattle.

Whereas for a long time it appeared that the settling of the Tutsi refugees in Masisi was an exemplary success story, roughly three decades after the migration large-scale violent conflicts erupted over the lands in the Bibwe area. The conflicts resulted in hundreds of deaths and forced a large proportion of the Tutsi population from their lands in Masisi, and, in many cases, entirely out of the Congo (see GEAD, 1993; Willame, 1997 and Tull, 2005).

Indeed, the conflicts around the Bibwe lands blended with what came to be known as the *Masisi Wars* of the early 1990s. And the *Masisi Wars* were almost instantaneously followed up by a catastrophe of even greater scale when the genocidal Rwandan MRND regime sought refuge in North Kivu after the loss of its civil war against the *Rwandan Patriotic Front* (RPF) led by Paul Kagame. Given that the large majority of the Tutsi

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<sup>209</sup> Other refugees of the 1959 violence in Rwanda were installed in UNHCR camps in Lemera-Mulenge and Kalonge in today's South Kivu and again others integrated with local Kinyarwanda-speaking communities in Nyiragongo, Rutshuru and Masisi.

populations that fled the Bibwe region in the early 1990s are at present still awaiting the restoration of their lands; and that twenty-five years after the Masisi Wars many still live their lives as landless refugees in Rwanda or as squatters on farms in the Kilorirwe area of Masisi and in the Virunga National Park, the conflicts of the early 1990s over the land in and around Bibwe is far from resolved.

The final and by far largest and most abrupt mass immigration into the Kivu region also originated in Rwanda and occurred in mid 1994 as the *Rwandan Patriotic Front* (RPF) won its four-year civil war against the *Forces Armées Rwandaises* (FAR) and ousted the genocidal Rwandan *Mouvement républicain national pour la démocratie et le développement* (MRND) regime from power. The loss of the civil war incited the regime together with its police and military apparatuses and the *Interahamwe* and *Impuzamugambi* militia to seek refuge in the befriended Second Republic Zaire of Joseph Mobutu Sese Seko.

It is estimated that approximately 1.5 million Hutu civilians accompanied the Rwandan regime as it passed through a safe zone established by the French Army's UN-mandated *Opération Turquoise* into ten UNHCR camps, all erected against international norms in close proximity to the refugee's country of origin, namely along the eastern borders of North and South Kivu (UNSC, 1994; Waters, 2001 and Dallaire, 2004). According to a UN Security Council Report (UNSC, 1994) that was authored only months after the installation of the Rwandan refugees, the heirs of the MRND regime controlled the daily lives of the people in the refugee camps including food rations and the access to medical equipment, and they hindered an estimated 870,000 civilian Hutus in North Kivu's three largest camps, Kibumba, Mugunga and Katale alone to return to post-war Rwanda.

A significant volume of literature (see e.g. UNSC, 1994; Willame, 1997; Waters, 2001; UNSC, 2001; Tull, 2005; Prunier, 2008 and Lemarchand, 2009) and several eyewitnesses that I interviewed in 2006 and 2012 have amply described how the remnants of the MRND regime constructed an authoritarian system inside the refugee camps while mounting guerrilla forces<sup>210</sup> that brutally ruled over the residents in the camps, looted and raped local populations

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<sup>210</sup> The Rwandan Hutu guerrillas that operated from the refugee camps were first the *Rassemblement Démocratique pour le Rwanda* (RDR) that was formed by members of the FAR and the Interahamwe and

inside and outside of the camps, terrorised and killed hundreds of Tutsi civilians in Masisi and Rutshuru, attacked political and civilian targets in Rwanda and threatened to rekindle the civil war across the border with the declared aim to reoccupy Kigali.

Several interviewed people from different backgrounds in Goma and Masisi concordantly stated, often in very similar terms, that the arrival of the Rwandan refugees in 1994 opened, what one witness to history referred to as the “*gate to hell*” (series 2.1.4 interview, Goma, 2013). Another stated:

*“First, thefts, rapes, abductions and seemingly random killings became day-to-day news for us. Life in Goma became a permanent effective curfew. We stayed at home in the evenings, locked us in and were still afraid. But travelling was even worse. I work in Goma but I have a small farm that I cultivate in Rutshuru; I stopped going to the land as travellers were mugged and killed on the roads. Locals quickly occupied the land, but I was lucky, I got it back without problems. But it was much worse in Masisi because the Interahamwe conducted veritable manhunts, first for the Tutsi and then for the Hunde and also for other autochthones. Overall thousands were killed. Even the grand chef of the cattle-raiser association was pillaged, all his cows were killed, his farm completely destroyed, his workers, even several of the Hutu workers, murdered and he had to flee, by night on foot in the rain hiding in the bushes from the Interahamwe. This happened to thousands of people and many got killed. The point here is: It happened to everyone, rich, poor, powerful, weak, concession-holder, peasant, Tutsi, Hunde Tembo. For once, we here in Goma and Masisi, we were all in the same boat. And the boat was sinking”* (Series 1.4.2. interview, Goma, 2013).

### **7.2.7 The AFDL and RCD Wars: The Roles of Land Tenure, Social Identities and Ongoing Effects**

As is widely related in the literature that the activities of the armed Rwandan groups inside and outside of the refugee camps along the Congo’s eastern border triggered primarily Rwanda, seconded by Uganda and Burundi, to assemble the rebel group *Alliance des Forces Démocratiques pour la Libération du Congo* (AFDL) from a group of smaller rebel

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*Impuzamugambi* militias in 1994 and thereafter the *Armée pour la Libération de Rwanda* (ALiR) in 1995 that was to become the *Forces Démocratiques pour la Libération du Rwanda* (FDLR) in 2001. The FDLR is still very active and disposes of operations bases throughout North and South Kivu as well as in parts of Maniema and several pockets along the Congo River.

components and to lead a military attack on the Congo in October 1996 that was to oust Mobutu Sese Seko from power, undo the Second Republic (Zaire) and install Laurent Desire Kabila as first President of the Democratic Republic of Congo (DRC) (Willame, 1997; Lemarchand, 1997; ICG, 1999; ICG, 2001; Waters, 2001; Tull, 2005; Pottek, 2007; Prunier, 2008; Lemarchand, 2009; Stearns, 2013).

It is also widely related in the literature (see e.g. ICG, 1999; ICG, 2001; Tull, 2005; Pottek, 2007; Prunier, 2008; Lemarchand, 2009; Stearns, 2013) that substantial interest divergences between components of the AFDL, and, most notably, between the Katangan and former Simba camps with which Kabila progressively re-aligned, and Kabila's Rwandan and Ugandan sponsors led to the rebellion of the *Rassemblement Congolais pour la Démocratie* (RCD-Goma). This triggered the Second Congo War that formally broke out in August 1998 and that was to formally end with the signing of the *Global and Inclusive Agreement on Transition in the Democratic Republic of Congo* (Pretoria Agreements) in December 2002.

However, despite the Pretoria Agreements of 2002, the more or less successful democratic transition phase including the conduct of a successful constitutional referendum, the promulgation of the currently valid Constitution and countrywide presidential and legislative elections, the war in the DRC's eastern regions came to no decisive and clear-cut end. This was partially because none of the military powers that were behind the rebellion were ever defeated. And it was also, because the undefeated powers had learned to profit economically, and in some ways also politically, from the regional conflicts (Tull, 2005)<sup>211</sup>.

But economic interests and military power at the central state level do not tell the whole story. As the thesis has extensively illustrated, the magnetic focus that European analysts tend to have on the national capitals blurs the view for the realities in the countryside. One important element is that besides the new power and interest constellations that evolved out of the stalemate on the battlefield between the four main war participants RCD-Goma,

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<sup>211</sup> An abundant pool of literature from the first post-millennial decade documents the profiteering from war and conflict in the DRC by private and state actors including Rwanda, Uganda, Simbabwe and Angola (see i.e. Wegemund, 2000; UNSC, 2001; UNSC, 2002; Reyntjens, 2001; Dietrich, 2001; de Faily, 2001; Prunier, 2008 and Collier, 2008).

RCD-KML, MLC and the Kabila camp in 2002, the two wars have also impacted substantially on the inter-communal relations in North Kivu.

Possibly one of the most lasting impacts was that the wars imprinted hostility patterns into the social DNA of inter-communal relations in North Kivu. Most notably, the wars amplified and ingrained a first level of existing fault lines that opposed the Tutsi to all other indigenous populations of North Kivu. And secondly, they also amplified a second level of fault lines that opposed the so-called *autochthonous* populations to the so-called *allochthones*, i.e. to the *rwandophone* Hutu and Tutsi populations of North Kivu.

There were several contributing elements to this development. The first is that the influx of hundreds of thousands of refugees in 1994 and the acts of theft, looting, rape, murder and other violence committed by armed refugees on the orders of their political and military leaderships left deep scars in the collective memory of the populations of North Kivu, as is well illustrated by the following statement of a Goma resident that worked for a UN office at the time:

*“When all those refugees arrived from Rwanda we felt pity and many of us wanted to help. North Kivu was itself just recovering from the violent events of the Masisi Wars and we knew what it was like to flee and seek refuge from warfare. But the radical Hutu organisations in the camps soon acted as if North Kivu was theirs. In fact, we soon felt that we were forcefully and brutally colonised by a population in need whom we had just provided refuge despite our own fragile situation”* (Series 2.4 interview, Goma, 2013).

The second important element is that the Rwandan-sponsored AFDL and RCD-Goma rebellions that were to immerse the entire DRC into six years of warfare took an extremely heavy toll on the populations of North Kivu. It is important to note that the AFDL rebellion was initially enthusiastically welcomed and actively supported by local populations and indigenous militias alike (see e.g. Willame, 1997 and Tull, 2005; the initial popular enthusiasm for the AFDL rebellion and the Rwandan FPR-coordinated attacks on and emptying of the refugee camps was also related on numerous occasions in author interviews in 2006 and 2012). But the enthusiasm rapidly transformed itself into opposition and resistance when it became increasingly clear that the Rwandan forces had entered the Congo with an intention to stay. Reflecting similar feelings of occupation as described in the above quote

about the 1994 refugee influx, an interviewed former Hunde militiaman expressed his view in the following terms:

*“The AFDL promised to rid us of a huge problem, namely the Interahamwe that were hunting and killing our people. Our militias soon offered to join Kabila to drive out the Interahamwe and send the Hutu refugees back to Rwanda. We did not want to be colonised by the Rwandan Hutus. But we soon realised that now the Rwandan Tutsi were colonising us. Once the AFDL reached Kinshasa most of the military officers in Kivu became Tutsi and many of them had never seen the Congo before 1996. We were in a state of occupation. So we made our own front against the occupation here in Kivu”* (Series 2.2.3 interview, Masisi, 2012).

Whereas a permanent occupation or annexation of the Kivu region was never formulated as a Rwandan policy, individual statements of senior representatives of the Rwandan regime made clear allusions to expansionist ideas<sup>212</sup>.<sup>1</sup> One of the most notorious examples of public positioning towards an annexation of at least parts of the Kivu provinces is a speech by the contemporaneous Rwandan president Pasteur Bizimungu of October 10<sup>th</sup> 1996 in the Rwandan city of Cyangugu in which he drew explicit and clear references to expansionist Rwandan ideologists such as those trumpeted by Kagame (1975) in declaring:

*“Even in the region called Bishugi that is now considered as a bastion of the Banyamulenge, all the residents of these areas were Rwandans. Even Kayenzi and the others, currently located in Zaire were part of Rwanda (...), if our fighters are presently in Zaire, they are at home...”* (quoted in Willame, 1997, pp. 97).

But more important than words were actions: In the aftermath of the AFDL war the Rwandan FPR government undertook immense strides to rebuild the Congolese state, or at least its security architecture, using Rwandan systems and personnel. To several observers inside and outside of the DRC, the Rwandan determination, ambition and brazenness to control the political destiny of its eastern neighbour is best illustrated by the RCD-Goma rebellion that erupted under Rwandan sponsorship less than one week after the Congolese president Kabila had dismissed his chief of staff, the Rwandan General James Kabarebe (ICG, 1999). More brazenly even was the way that the attack was carried out: while Rwandan-



commanded mutinying Congolese military officers and Tutsi militias attacked Congolese military posts in the Kivu region, James Kabarebe commanded the hijacking of three Congolese airplanes and used these to transport Rwandan and mutinying Congolese officers to an army base in Kitona in order to attack the DRC's capital city (ICG, 1999; Tull, 2005; Prunier, 2008).

The course of the war is well documented in the relevant literature (see e.g. ICG, 1999; ICG, 2001; ICG, 2003; Reyntjens, 2001; Tull, 2005; Prunier, 2008; Stearns, 2013). Nonetheless, a few elements are worthwhile to highlight: The RCD-Goma was initially created with the aspiration to be a political movement; it made explicit efforts to present to the watchful eye of the world a multi-ethnic base and to brand itself with names of well-reputed Congolese intellectuals such as Ernest Wamba dia Wamba and later Emile Ilunga. This however, could not disguise the fact that the movement had no credible political vision or program to offer to back up its military ambitions. And hence, the RCD-Goma lay rapidly bare as an inefficient and corrupt extension of the Rwandan regime within months of its creation (Tull, 2005; Prunier, 2008; Stearns, 2013).

The RCD's rule over the eastern Congo triggered intense grassroots resistance, and much of this resistance instrumentalised the RCD's exposed connections to Rwanda to coin nativist and ethno-nationalist rallying calls. But the ethno-tribal cleaving of the RCD conflict was not only driven by the so-called *autochthonous* resistance movements. Many of the RCD leadership's decisions and actions' caused grievances to the local populations. And many of these grievances followed well-carved grievance patterns of the past. For example, the RCD-elites used their positions of political power to extract lands from the customary land domains in order to redistribute the latter within their own networks. This led to a further reduction of the customary land base in the concerned areas, i.e. mostly in Masisi and Rutshuru, to increasing demographic pressures on the shrinking available land base, and on a secondary level also to a further expansion of rwandophone land interests at the expense of the so-called *autochthone* populations. And what is more, it is alleged, the RCD also incited rwandophone customary client populations to refuse to pay the customary fees for the use of customary lands. In this context, an interviewed Hunde notable stated:

*“The AFDL was supposed to establish some balance by also representing autochthonous interests. But the AFDL was for the Tutsi. The RCD was even worse because it enforced the Tutsi interests on the Hutu and the Hutu interests on everybody else. In Masisi the RCD installed very many puppet chiefs that sold community lands to the elites of the administration in return. And it bought the Hutu peasants into the system by promising them that they had no more customary fees to pay to the tribal authorities. ” (Series 1.1.2 interview, Masisi, 2012).*

Both of these actions, i.e. the initiation of a second “domanialisation” wave and the programmatic refusal to pay customary fees to the local bami, kindled land tenure conflicts that followed well-carved ethno-tribal fault line patterns and that contributed further to an ethno-politicization of the ostensibly civil rebellion that the RCD initially attempted to represent to the world. And what is more, the link between the civil and communal elements of the conflict was mostly land. The result of this dynamic was that in the southern four territories of North Kivu both the RCD occupation and the resistance became organised along extremely clear-cut ethno-tribal fault lines as land interests mingled with social identity interests and the emerging complex mingled with the larger political interests of violent state actors (and also of those non-state actors that aspired to become state actors), i.e. with the interests of the more conventional participants to civil and interstate war.

By consequence, the Second Congo War that already had two visible, more or less distinct interstate war and civil war components, became interwoven with an undeclared and oftentimes much less visible communal element of conflict; and this communal element was intrinsically interwoven with a substrate of competition, dispute and conflict over land tenure at the rural grassroots base. Important for the recent past, the presence and also for the foreseeable future is that whereas the visible, declared interstate and civil wars have at least temporarily come to a conclusion with the signing of the Pretoria Accords and other agreements some one-and-a-half decades ago beginning in 2002, the communal conflicts in North Kivu were there to stay. Indeed, the communal conflicts have re-blended and re-merged with the ongoing community-level conflicts over land tenure and social identities that had given rise to the communal conflicts in the first place.

### **7.2.8 A Birds-Eye View of Land Tenure and Social Identity Conflicts in North Kivu: A Subchapter Conclusion**

This chapter has briefly presented North Kivu's ethnic communities, their geographic distributions, traditional lifestyles, traditional forms of political organisation and their most prominent types of land tenure. It has discussed the integration of the local communities, their political units and land tenure systems into a succession of colonial and postcolonial state systems. It has shown how land tenure was consistently used, though to different degrees, by colonial and postcolonial authorities as a twin tool for extending territorial state control into the rural areas and for the personal enrichment of political elites and their cronies. The discussion has also shown how the functional redefinition of the land tenure system has played a central role in spawning conflicts over land and social identities, how it has thereby contributed to the eruptions of the civil and interstate wars of the 1990s and early 2000s and how it continues to envenom the relations between North Kivu's socio-cultural identity-based communities until this very day.

## **8 Conclusion-I: General Conclusion**

The main conclusion of the thesis is based on the following fieldwork observations: Firstly, land is a key factor in most rural processes: land is by far the most valuable economic asset for the large majority of the rural populations, it is their principal source of livelihood, it is the most important family heritage, it is a social asset upon which contacts to the rural community are built, a source of social status, and for many it is also a connection to the spiritual world. Rural residents of North Kivu principally define who they are by references that they draw to the land both at the individual and the collective levels: Land is loaded with meaning, at the individual household level as farmable family plots, at the communal level as communal territories and at the national level as national territory.

The second observation is that conflict over land tenure is a central aspect of the rural lives of North Kivu's inhabitants. Given the centrality of land to social and economic processes within the wider contexts of high and rising demographic pressures and a diminishing land resource base (in relative terms), it comes as no surprise that competitions for farmland are fierce in the rural regions of North Kivu. However, North Kivu certainly does not stand alone in this position: Other regions in the Albertine Rift Valley with comparable population densities also experience comparable competition levels.

But it is in North Kivu that land tenure competitions frequently evolve into disputes and conflicts: Our fieldwork suggests that almost half of the province's rural populations have been involved in disputes or conflicts over land tenure and that roughly three quarters have been victim or otherwise heavily affected by violent tenure conflict. Furthermore, the Congolese state has largely retracted itself from the management of tenure competitions, disputes and conflicts. Indeed, it leaves the field principally to customary institutions, as well as secondarily, also to local and international NGOs and the UN. Finally, in very many cases, North Kivu's residents are completely left to fight their land battles for themselves.

These observations lead to a first level conclusion that the Congo's land tenure system is dysfunctional with regards to its designated purpose, namely to administer competitions in the land markets in non-confrontational ways. On a first glance, it appears unconvincing that a

dysfunctional system has been maintained in place over a decades-spanning extended period of time. But a brief examination of past tenure regimes in the Congo clearly highlights that there has been a substantial level of institutional continuity across the political regime changes that began with the Belgian Congo and that have so far ended with the current Third Republic.

Indeed, previous discussions have highlighted that the Congo's land tenure regimes have not significantly changed between the establishment of the colonial triple domain system in the early 1920s that foresaw the Belgian interpretation of the Code Napoleon combined with private and state ownership for the private and public domains and tradition-based customary systems for the indigenous populations. The colonial state had even devised the *domanialisation* conversion mechanism that transfers land rights from the customary to the two formal domains. This general structure exists in design and application until this very day. And it has been used throughout colonial and postcolonial history to provide land rights in exchange for political alliances.

The second part of the results discussion explored the formal land tenure regime and its application in conjunction with successive administrative restructurings that redefined and integrated customary polities into the formal state administrations. The discussion demonstrated how colonial and postcolonial interventions into the customary political and land administrations have provoked conflicts over land tenure and social identities over time. This was particularly the case in the southern four territories of North Kivu where central state interventions into the customary land tenure and political administration systems were particularly sweeping and where simultaneously, large-scale immigrations from Rwanda changed the ethno-demographic compositions in the disfavour of the communities that auto-identify as *autochthones*.

The final and aggregate conclusion then is that conflicts over land tenure are widespread throughout North Kivu because the state fails in its management of the land tenure domain. This applies to the entire province of North Kivu where land tenure conflicts are extremely abundant. In the southern four territories of North Kivu the situation is substantially aggravated by the facts that firstly, a succession of colonial and post-colonial states have used their prerogatives over land tenure and rural administrations to radically redesign the socioeconomic, socio-cultural and socio-political landscapes on numerous occasions. The

second specificity of southern North Kivu is that here one massive colonial-state orchestrated population migration and comparably large-scale refugee influxes have not only increased the pressures on the land base enormously, but they have also profoundly changed the ethno-demographic composition of these areas.

This has contributed to a situation where the so-called *autochthonous* Hunde, Nyanga and Tembo populations of southern North Kivu feel marginalised and literally “squeezed out” of their land by both the largely rwandophone landholders that have acquired the colonial farms of Masisi and Rutshuru during the Zairinisation period and by the rwandophone peasants that have become their prime competitors for increasingly rare customary lands. At the same time, the rwandophone peasants feel disadvantaged outside of the Bwisha chefferie by the *autochthonous* customary tenure regimes and their authorities. The situation is further complicated by the recent experience of occupation that was particularly strongly felt in the southern territories of North Kivu where a succession of mostly rwandophone and Tutsi-dominated rebel groups from the RCD-Goma via the CNDP to the M23 had their strongholds.

## **8.1 Conclusion-II: Formal versus Customary Tenure Systems in Tenure Conflict Resolution; Policy Implications and Future Research Needs**

This thesis’ scathing assessment of the Congolese land tenure system in its principal role as a tool for administering competition, dispute and conflict between land market participants should not detract from the fact that the system has quite successfully served numerous subsequent Congolese governments in a very different function: namely as a relay and amplifier for state power projection.

As highlighted on several occasions throughout this thesis, all consecutive Congolese governments from the Congo Free State via the Belgian Congo to the three subsequent postcolonial republics have quite efficiently used the land tenure system to amplify and project their, by European, North American and Eastern Asian standards very weak central state power into the distant rural countryside of North Kivu and other provinces. Quite clearly, Boone (2014) is wrong when she claims that the primary and quasi-exclusive role of Sub-Saharan customary tenure systems is to insulate African central state elites from looming class

conflict by capping popular discontent at the tribal administration levels in the rural peripheries. For Boone (2014), customary property administrations represent nothing but a farce. However, Boone (2014) overlooks firstly, that despite all colonial and postcolonial state interferences, customary property systems remain by and large rooted in the local norms, customs, traditions and cultures of the rural communities. It is, amongst others, this cultural rooting that provides varying levels of popular legitimacy and support to the customary tenure systems. And it is the cultural rooting and the therein anchored popular legitimacy that allow the customary tenure systems and their representatives, i.e. the customary authorities, to remain implanted and to varying degrees also effective as property rights brokers within their respective jurisdictions. In this context, our research clearly supports the claims of authors such as Platteau (1996), Kalabamu (2000), and Nyamu-Musemi (2006), Mastaki (2005) and Mastaki and Vake (2009), according to which Sub-Saharan customary tenure practises are oftentimes too diverse and in many cases also too dynamic to be coded in western-style monolithic nationwide property codes and that semi-formalised customary tenure systems are oftentimes much better suited to adapt to the particular needs of rural land clients in largely semi-formal or informal, oftentimes verbally negotiated and contracted, and very oftentimes also non-monetized land relations.

At the same time, at least in rural North Kivu and in several adjacent regions that I have visited in the course of the fieldwork, the central state is so thinly present that even state administrators concede that customary land tenure institutions are alone to dispose of any level of local presence (interview series 1.1.1, 1.1.6 and 2.1.4). This means that in absence of the customary land administrations, North Kivu's rural land markets, their transactions and their competition, dispute and conflict negotiation processes would be entirely informal.

Hence, despite all their shortcomings, customary tenure systems have important roles to play as rural property management institutions, as tenure dispute and conflict arbitration, mediation and adjudication institutions, as rural administrations and as tools to project central state control into the countryside. However, the effectiveness of the customary tenure systems to fill these roles has been eroding for decades and both the central state, the customary authorities themselves and exogenous dynamics have contributed to this development.

I have explored several factors that have undermined the roles and effectiveness of customary land tenure institutions in the results discussions of Chapter 7. Some of the most salient factors are attributable to the customary authorities themselves; examples of which include the wholesale of communal land assets, corruption and venality, succession disputes and conflicts within customary authority hierarchies and the neglect of tribal norms and customs. Other salient factors are more closely attributable to the central state; examples of which are linked to repeated cycles of socio-political engineering of customary jurisdictions and customary hierarchies, attempted redefinitions of entire customary tenure systems, forced transactions of customary lands and imposed migration movements. And a final set of factors appears largely exogenous to the central state - customary institution relation and includes rapid population increase leading to land shortages for peasant farmers, conflict and socioeconomic misery-induced population movements that have, at least in many regions of North Kivu heavily modified the ethno-demographic composition of customary client populations, a rise of economic alternatives to farming (via, e.g. urbanisation, artisanal mining, mercenarism and/ or looting) and the proliferation of small arms that transfers clout from the hands of traditional authorities to those that carry guns.

But despite all the listed points that are eroding the customary tenure systems possibly even more in North Kivu than in most other places of Sub-Saharan Africa, North Kivu's customary systems remain for the time being and for the foreseeable future without alternative: Neither the DRC's formal state institutions nor its budding civil society organisations would come anywhere near of penetrating the vast rural under-structure of Congolese society as the customary institutions continue to do. This observation is backed as much by the questionnaire surveys presented in Subchapter 7.2 as by the interviews presented throughout much of Chapters 6 and 7 and the non-participant observation from the field: The support of local customary authorities was sought prior to commencing state- and/or UN-backed conflict mediation sessions and customary authorities were present and vocal in all of the mediation sessions that I assisted in 2006, 2007, 2012, 2013 and 2014.

Hence, it appears that North Kivu and possibly most of the rural DRC are in a very slow and painful process of moving from customary land tenure models to formalised models. This transformation was initiated at the moment of formal colonisation at Berlin Conference



of 1885 and it has picked up steam in the wake of the *Zairianisation* and *domanialisation* processes beginning in the 1970s. But on most occasions, the transformation has primarily produced winners amongst the political, economic and customary elites of the DRC, while it has produced only relatively small numbers of winners and very many losers amongst North Kivu's peasant populations. Nonetheless, the drive to formalise land ownership is clearly palpable even in the small villages of rural North Kivu where a majority of survey respondents stated that they would like to formalise their plot ownership if they could afford it and central state agencies were present, available and trustable. This tendency was particularly strong in areas of heterogeneous ethno-demographic population structures or where many peasants were of a different ethno-tribal background than the land administering tribal authorities. But the central state has next to no direct presence and it is very unlikely that this will change in the foreseeable future.

Hence, I conclude that land tenure and property security, which, as this thesis has repeatedly demonstrated, are central elements of violent conflict in North Kivu, require external technical, financial and administrative support. Technical, financial and administrative support should be provided to the land administrations of the formal state and to those of the customary domain as both will continue to coexist and to defend their jurisdictions in the foreseeable future. Providing technical and financial support is likely to open channels for influencing policy and policy execution standards both at the formal state and the customary administration levels. Strategic long-term goals would include to progressively formalise the customary systems and to slowly work on a convergence between different customary and formal state systems, their standards and practices. The same applies to conflict resolution (arbitration, mediation, adjudication) processes, which should be better coordinated between the formal (state), semiformal (customary) and informal (private) actors and donors should attempt to gain an increased influence on the coordination processes in order to reduce potential conflict of interest scenarios amongst any of the conflict resolution agents and also to gain progressively more insight into the extremely heterogeneous land tenure sector and its multitude of actors and processes.

On an optimist note, it appears that the DRC's government has recognised in the wake of the most recent wars the threat that land tenure insecurity, dispute and conflict pose not

only to the socio-economic wellbeing of its people, but also to functionality of the central state and, ultimately to its very existence. In response, the DRC has not only invested into tenure conflict resolution via, for example its rural *bureau des cas litigieux* offices and its STAREC program that disposes of resources to provide and coordinate conflict resolution, but it has also opened its borders to externally based conflict resolution bodies such as large international NGOs (see e.g. the conflict mediation program of the Norwegian Refugee Council in North Kivu) and United Nations bodies such as UN Habitat.

### **8.1.1 Future Research Needs**

The current thesis regards itself as an original research contribution with a certain number of applicable elements (some of the latter were briefly exposed in the results discussion sections of Subchapters 7.1 and 7.2 as well as in the current Subchapter 8.1 on policy implications). The thesis has entered some barely-trodden ground in its mixed methods research (MMR) approach that included questionnaire and interview surveys as well as participant and non-participant observational techniques and original document and other grey literature research in the scarcely documented post-conflict environment of North Kivu. As laid out in the methods discussion in Chapter 5, the approach's strength lie in its cross verification of the results from the different research methods, each of which for itself has its own significant limitations in the given research setting. Understanding these limitations directly leads to certain conclusions about future research needs in the field.

Future research needs in the field include expanded quantitative and qualitative research on land tenure competition, dispute and conflict experiences in rural North Kivu and adjacent regions : both additional questionnaire and interview research, as well as case studies on individual large-scale land tenure conflicts should be performed. Qualitative and quantitative research should also be undertaken on experiences with conflict resolution mechanisms and the experienced accessibility of arbitration, mediation, adjudication, and ultimately also enforcement tools. What is more, action research is required on the vulgarisation of formal and semi-formal land tenure regulations, norms and customs as well as on best practises. This would aid researchers to gain information on customary land tenure traditions, norms, customs and practises, on customary and formal state land administration

practises and on dispute and conflict resolution practises. Researchers could participate in the vulgarisation of widely unknown rules and regulations, norms and practises and thereby learn about and better understand the latter and compare these with practises in other regions of the DRC and, indeed, Sub-Saharan Africa and other world regions.

What is more, additional research is also required on the linkages and docking points between land tenure conflict and the higher and more visible levels of communal, civil and interstate conflict. Much of this research would be qualitative via interviews with the different types of conflict participants, as well as with decision-makers and eyewitnesses. Important lessons could be learned from this type of research for both theoretical and applied knowledge in conflict avoidance and resolution at all conflict levels in North Kivu, the DRC, Great Lakes Africa and possibly, on a more general level for Sub-Saharan Africa and other world regions that are characterised by subsistence agriculturally-defined political economies and ethno-tribally-defined political sociologies.

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## Appendix A : Pictures from Fieldwork and Area



Photo #1 : Land tenure mediation session with UN-Habitat mediation team in Kikuku, Rutshuru, 2012



Photo #2 : Land tenure mediation session with UN-Habitat mediation team in Kikuku, Rutshuru, 2012





Photo #3 : Tracing field markers during negotiations near Nyanzale, Rutshuru, 2012



Photo #4 : Hand-shake between tenure conflict party representatives in Kikuku, Rutshuru, 2012





Photo #5 : Tracing a compromise near Nyanzale, Rutshuru, 2012



Photo #6 : Author with members of UN-Habitat mediation team and hosts in Masisi Centre, Masisi, 2012





Photo #7 MONUSCO guarded negotiations near Nyanzale, Rutshuru, 2012



Photo #8 MONUSCO guarded commute to Nyanzale, Rutshuru, 2012





Photo #9 : Questionnaire survey session in Sake, Masisi, 2012



Photo #10 : Author on commute to questionnaire survey site, Masisi, 2012





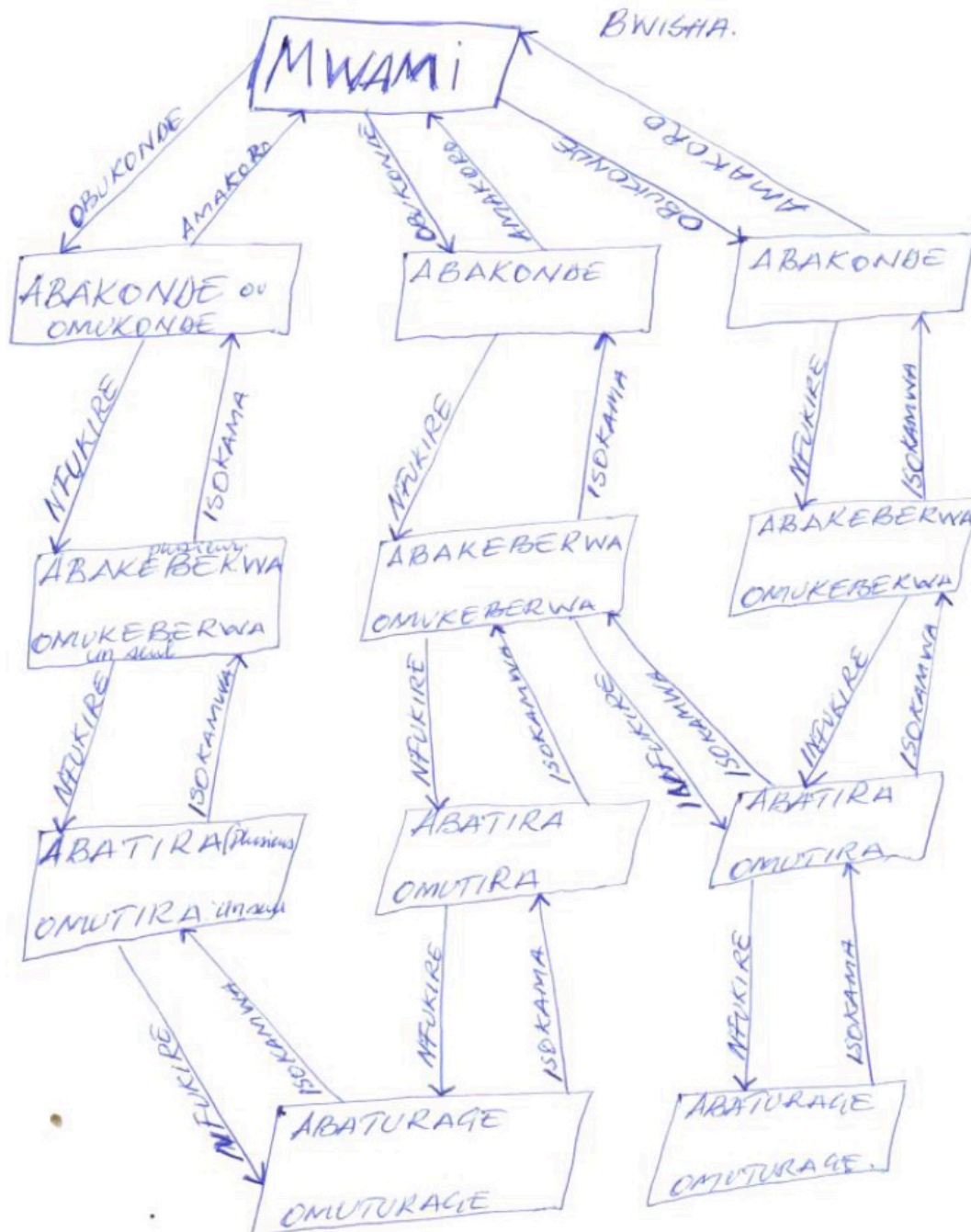
Photo #11 : Questionnaire survey site near contested lands in Kilorirwe, Masisi, 2012



Photo #12 : Rutshuru administrators and customary authorities of Bwito in tenure conflict mediation session in Kikuku, Rutshuru, 2013

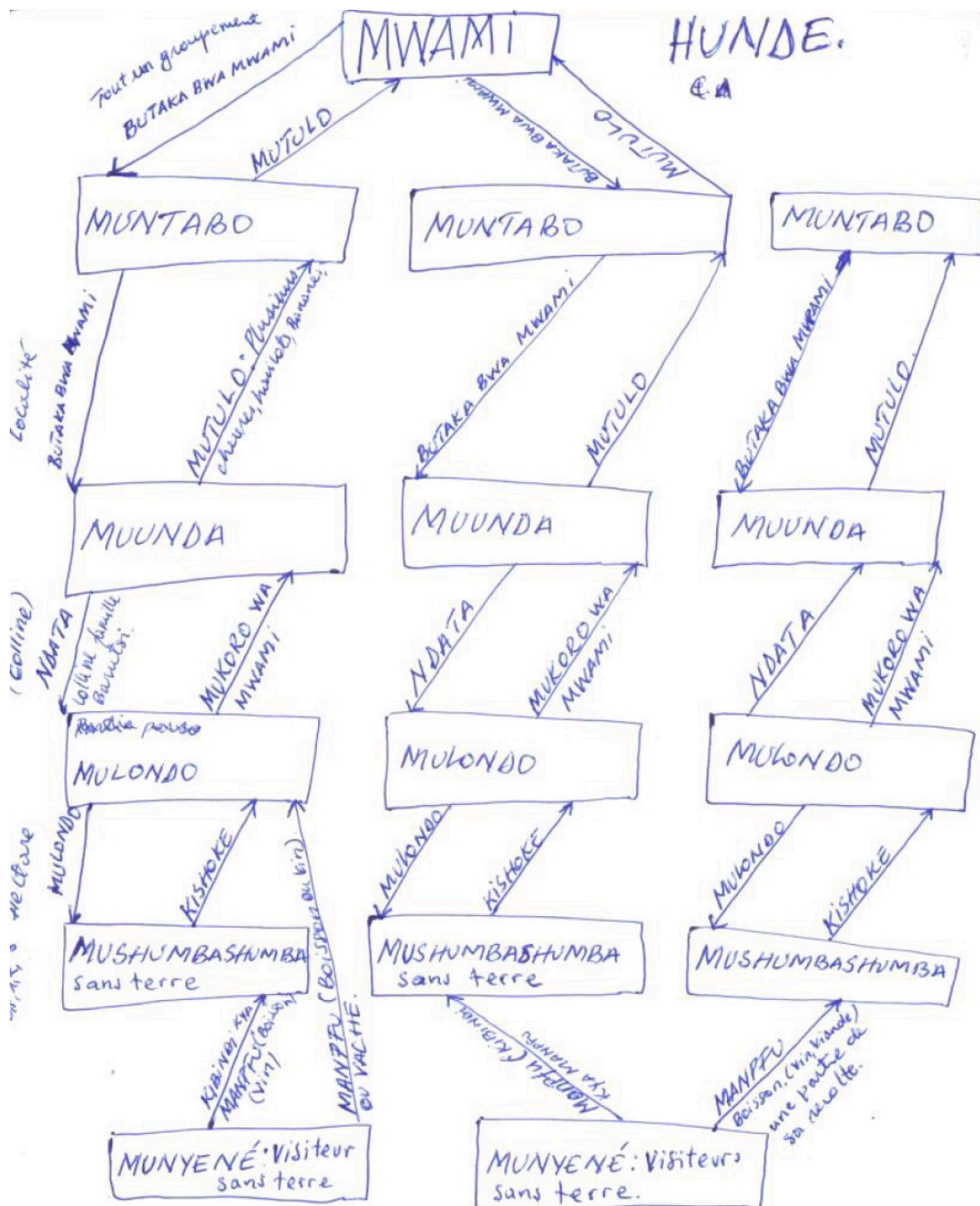
## Appendix B: Organograms of Customary Tenure Models

### Customary Tenure Model Hutu (Bwisha)



Source : Author fieldwork (2012)

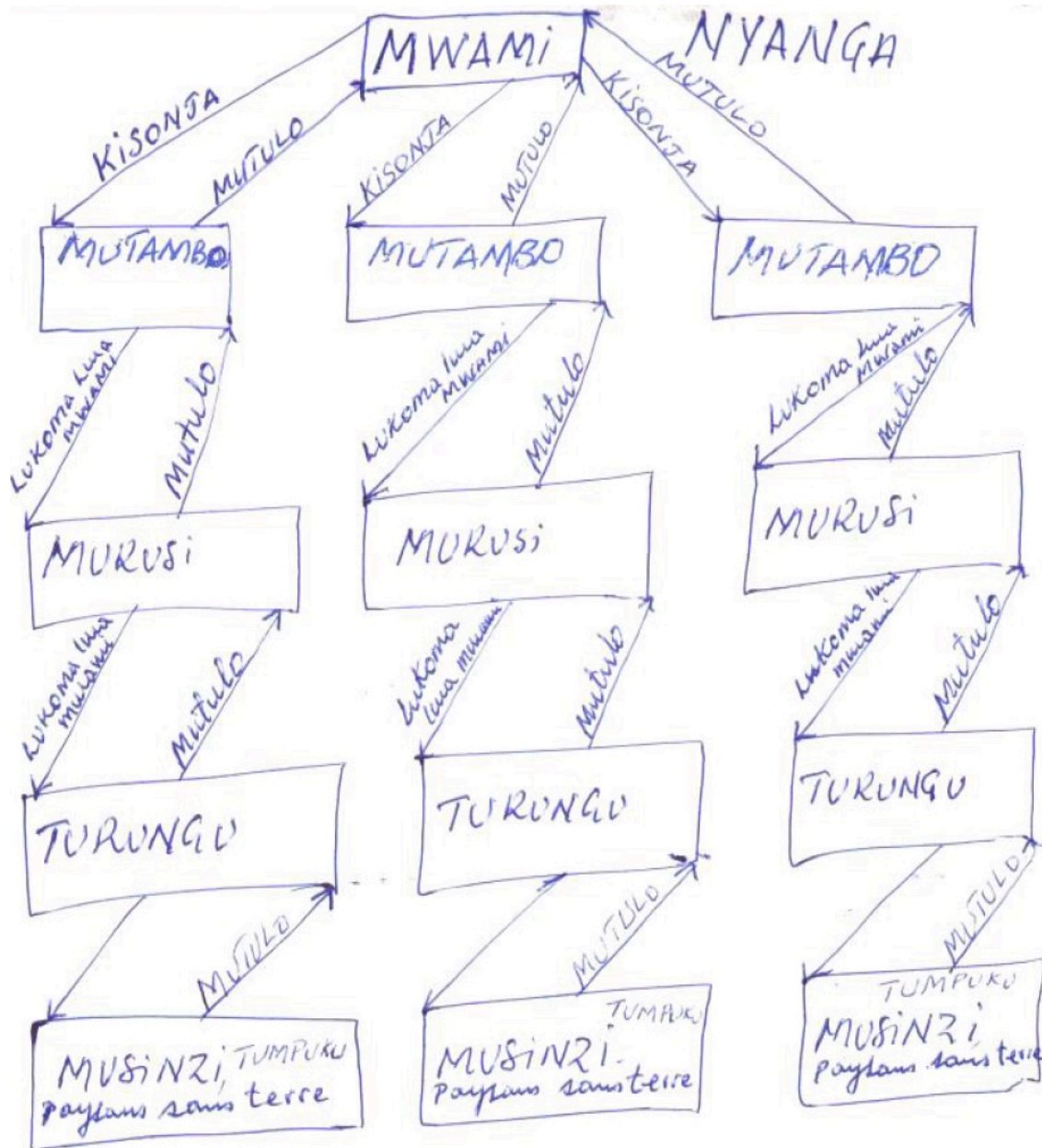
## Customary Tenure Model Hunde (Bahunde)



Source : Author fieldwork (2012)



## Customary Tenure Model Nyanga (Wanianga)



Source : Author fieldwork (2012)

# Appendix C: Population & Rural Administration Tables

## Demographic Tables for Territories (see footnotes for methods)

- |                              |                             |                            |
|------------------------------|-----------------------------|----------------------------|
| 1) Beni <sup>213</sup>       | 2) Lubero <sup>214</sup>    | 3) Masisi <sup>215</sup>   |
| 4) Nyiragongo <sup>216</sup> | and Rutshuru <sup>217</sup> | 5) Walikale <sup>218</sup> |

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<sup>213</sup> All numbers in the population tables of Appendix C must be regarded as approximations as the administrative subunits of North Kivu below the territory level have never been geographically surveyed and the last population census dates from 1981. For current administrative purposes, groupements populations are simply estimated on an annual basis and these numbers are reported to the collectivité and from there to the territory level where they are assembled and reported to the national planning office. The CAID project (2017) bases its population estimates on the numbers reported by the territorial administrations. However, it does not break the numbers down to the collectivité and groupement levels. For both the surface areas and the population numbers the author enquired directly with the territorial offices for estimates for each of the groupements and collectivités. The territorial offices provided the base numbers for my estimates. But in several cases including Beni, the base numbers did not add up to the totals that were reported by the territorial offices. In the case of Beni the calculated total surface was too large (10,446 km<sup>2</sup> reported cumulatively for the groupements versus 7,484 km<sup>2</sup> reported for the entire territory including the urban areas, the rural administrative entities and the Virunga National Park (PNVi)). The reported population numbers for the groupements was also too large (1,007,058 versus 814,707). For the purpose of this thesis the author applied a correction factor of 0.5 to the land surfaces of each groupement (bringing down the cumulative surface total of all groupements to the value of 5,223 km<sup>2</sup> which corresponds approximately to the total rural area verbally estimated by the territorial administrator. This would reflect a surface of roughly 2,000 km<sup>2</sup> for the Beni section of the PNVi, which would also reflect more realistically an estimative cartographic analysis (the available data on park boundaries is not precise enough to provide more than rough estimates of the PNVi park sections per territory). Similarly, a correction factor of 0.81 was applied to the population numbers of each groupement such that the cumulative totals off all groupements added up to the numbers reported by the CAID website. The stated purpose of the exercise within the frame of this thesis is not to provide precise surface area, population or population density numbers for each administrative subunit, but rather to provide order of magnitude estimates that are accurate enough to inform rough estimations of rural population densities in the groupements. Although not precise, the estimations can serve to identify rural hotspots of potential farmland resource scarcity and to estimate resulting competition levels for farmland. Given the lack of fully reliable data for the rural areas of North Kivu, the applied method appears as the most suitable.

<sup>214</sup> See previous footnote. Corrective factors were also applied to surface areas and populations reported for Lubero: The corrective factor for Lubero's surface area was 0,92 and that for the population was 0,74.

<sup>215</sup> See previous footnote. Corrective factors were also applied to surface areas and populations reported for Masisi: The corrective factor for Masisi's surface area was 1,06 and that for the population was 0,91.

<sup>216</sup> See previous footnote. Corrective factors were also applied to surface areas and populations reported for the groupements of Nyiragongo: The corrective factor for Nyiragongo's surface area was 1,00 and that for the population was slightly over 1,00.

<sup>217</sup> See the previous footnote. Corrective factors were also applied to the surface areas and populations reported for the groupements of Rutshuru: The corrective factor for Rutshuru's surface area was 1,00 and that for the population was 1,17.

<sup>218</sup> See the previous footnote. Corrective factors were also applied to the surface areas and populations reported for the groupements of Walikale: The corrective factor for Walikale's surface area was 0,92 and that for the population was 1,56.

<b>BENI Territory</b>					
Collectivité	Groupement	Area (Km²)	Population	Density	Mwami
<b>BASHU Nande Chiefdom</b>	Bulambo Isal	48	36 966	778	Nande
	Malio-Butuhe	116	80 430	693	Nande
	Isale-Vuhovi	112	32 795	293	Nande
	Isale-Kasongwene	279	78 096	280	Nande
	Masiki-Kalonge	60	31 597	527	Nande
	Bunyuka	63	14 048	225	Nande
	Masiki-Vayana	52	24 349	468	Nande
<b>Sub-Total</b>	<b>Total Bashu</b>	<b>729</b>	<b>298 282</b>	<b>409</b>	<b>Nande</b>
<b>BENI MBAU Sector</b>	Banande-Kainama	72	5 756	80	Nande
	Babuba-Kisiki	280	34 755	124	Nande
	Batangi-Mbau	515	91 889	179	Nande
	Baswaga Madiwe	496	70 634	143	Nande
<b>Sub-Total</b>	<b>Total Mbau</b>	<b>1 362</b>	<b>203 034</b>	<b>149</b>	<b>-----</b>
<b>RUWENZORI Sector</b>	Baniangala	84	9 269	110	Nande
	Buliki	185	31 010	168	Nande
	Basongora	476	31 010	65	Nande
	Malambo	222	22 143	100	Nande
	Bolema	235	78 956	337	Nande
<b>Sub-Total</b>	<b>Total Ruwenzori</b>	<b>1 201</b>	<b>172 388</b>	<b>144</b>	<b>-----</b>
<b>WATALINGA Talinga Chiefdom</b>	Bawisa	45	31 213	701	Watalinga
	Batalinga	155	34 966	226	Watalinga
	Bahumu	76	74 876	992	Nande
<b>Sub-Total</b>	<b>Total Watalinga</b>	<b>1 932</b>	<b>141 054</b>	<b>73</b>	<b>Watalinga</b>
City of Beni		184	355 160	1 930	-----
City of Oicha		93	143 778	1 546	-----
<b>Sub-Total</b>	<b>Total Cities</b>	<b>277</b>	<b>498 938</b>	<b>1 801</b>	<b>-----</b>
<b>Sub-Total</b>	<b>Total Urban</b>	<b>277</b>	<b>498 938</b>	<b>1 801</b>	<b>-----</b>
<b>Sub-Total</b>	<b>Total Rural Admin</b>	<b>5 223</b>	<b>814 758</b>	<b>156</b>	<b>-----</b>
<b>Sub-Total</b>	<b>Total PNVI (estimate)</b>	<b>1 984</b>	<b>-</b>	<b>-</b>	<b>-----</b>
<b>Sub-Total</b>	<b>Total Rural</b>	<b>7 207</b>	<b>814 758</b>	<b>113</b>	<b>-----</b>
<b>TOTAL</b>		<b>7 484</b>	<b>1 313 696</b>	<b>176</b>	<b>-----</b>



LUBERO Territory					
Collectivité	Groupement	Area (Km²)	Population	Density	Mwami
BAMATE Nande Chieftdom	Luenge	554	3 859	7	Nande
	Tama	343	2 984	9	Nande
	Buhimba	922	32 413	35	Nande
	Munzoa	192	14 486	75	Nande
	Hutwe	94	17 934	191	Nande
Sub-Total	Total Bamate	2 105	71 676	34	Nande
BASWAGHA Nande Chieftdom	Ngulo	1 550	14 745	10	Nande
	Luongo	1 471	157 311	107	Nande
	Bukunye	1 090	142 687	131	Nande
	Bulengya	1 153	40 491	35	Nande
	Buyora	1 514	150 004	99	Nande
	Muhola	173	2 675	15	Nande
	Manzia	1 153	40 491	35	Nande
	Mwenye	296	4 321	15	Nande
Sub-Total	Total Bashwaga	8 398	552 724	66	Nande
BATANGI Nande Chieftdom	Itala	383	2 561	7	Nande
	Mbulie	404	14 682	36	Nande
	Musindi	881	156 771	178	Nande
Sub-Total	Total Batangi	1 669	174 013	104	Nande
BAPERRE Pere Chieftdom	Bapakombe	1 637	35 651	22	Pere
	Baredje	961	10 595	11	Nande
	Bapukara	158	7 234	46	Nande
	Babika	314	7 121	23	Pere
	Batike	803	8 413	10	Nande
	Bapaitumba	1 819	11 662	6	Nande
Sub-Total	Total Bapere	5 693	80 676	14	Pere
Cités	Kanyabayonga	14	40 198	2 871	-----
	Kayna	12	37 039	3 087	-----
	Kirumba	15	57 300	3 820	-----
Sub-Total	Total Towns	41	134 537	3 281	-----
Ville de Butembo	Ville de Butembo	190	344 838	1 812	-----
Sub-Total	Total Cities	190	344 838	1 812	-----
Sub-Total	Total Rural Lubero	17 865	879 090	49	-----
Sub-Total	Total Urban Lubero	231	479 375	2 072	-----
TOTAL		18 096	1 358 465	75	-----

MASISI Territory					
Collectivité	Groupe ment	Area (Km²)	Population	Density	Mwami
BAHUNDE Hunde Chieftdom	Kamuronza	530	42 842	81	Hutu
	Muvunyi Kibabi	200	43 233	216	Hutu
	Muvunyi Karuba	106	40 208	380	Hunde
	Muvunyi Matanda	250	40 266	161	Hunde
	Muvunyi Shanga	185	62 847	340	Hunde
	Ufamandu I	443	48 256	109	Tembo
Sub-Total	Total Bahunde	1 713	277 652	162	Hunde
BASHALI Hunde Chieftdom	Bashali Kaembe	223	68 911	308	Hunde
	Bashali Mokoto	982	177 845	181	Hunde
Sub-Total	Total Bashali	1 205	246 756	205	Hunde
OSSO Sector	Buabo	139	29 980	216	Hunde
	Banyungu	102	18 451	181	Hunde
	Biliri	124	31 293	253	Hunde
	Bapfuna	288	37 658	131	Hunde
	Nyamaboko I	285	29 499	104	Hunde
Sub-Total	Total Osso	938	146 880	157	*****
KATOYI Sector	Luindi	250	10 385	42	Hunde
	Kambule	83	6 571	80	Hunde
	Ufamandu II	195	13 299	68	Tembo
	Kibabi	62	2 367	38	Hunde
	Nyamaboko II	216	13 919	64	Hunde
	Nyalipe	72	5 521	77	Kumu
Sub-Total	Total Katoyi	878	52 062	59	*****
Sub-Total	Total Rural Masisi	4 734	723 350	153	*****
Sub-Total	Total Urban Masisi	-	-	-	*****
TOTAL		4 734	723 350	153	*****

NYIRAGONGO Territory					
Collectivité	Groupe ment	Area (Km²)	Population	Density	Mwami
BAKUMU Kumu Chiefdom	Munigi	32	46 384	1 450	Hunde
	Buvira	17	6 499	382	Hunde
	Kibati	36	14 427	401	Hutu
	Buhumba	39	11 878	305	Tutsi
	Kibumba	16	16 598	1 037	Hutu
	Mudja	26	40 022	1 539	Tutsi
	Rusayo	27	9 940	368	Mbute
Sub-Total	Total Rural Admin	193	145 748	755	Kumu
Sub-Total	Total PNVI	140	-	-	
Sub-Total	Total Rural	333	145 748	438	
Sub-Total	Total Urban	-	-	-	-----
TOTAL		333	145 748	438	Kumu

Rutshuru Territory					
Collectivité	Groupe ment	Area (Km²)	Population	Density	Mwami
BWISHA Hutu Chiefdom	Rugari	74	19 809	268	Hutu
	Kisigari	189	100 293	531	Hutu
	Bweza	87	12 617	145	Hutu
	Jomba	292	175 236	600	Hutu
	Busanza	288	157 083	545	Hutu
	Bukoma	203	131 904	650	Hutu
	Binza	489	208 873	427	Hutu
Sub-Total	Total Bwisha	1 622	805 814	497	Hutu
BWITO Hunde Chiefdom	Tongo	165	101 495	615	Hutu
	Bukombo	183	137 620	752	Hunde
	Bishusha	134	62 366	465	Hunde
	Bambo	165	38 698	235	Hunde
	Kanyabayonga	345	70 993	206	Hunde
	Kihondo	261	114 428	438	Hunde
	Mutanda	270	194 972	722	Hunde
Sub-Total	Total Bwito	1 523	720 571	473	Hunde
Towns (Cités)	Kiwanja	18	79 972	4 443	-----
Sub-Total	Total Rural Admin	3 145	1 526 385	485	-----
	Total PNVI	2 126	-	-	-----
	Total Rural	5 271	1 526 385	290	-----
Sub-Total	Total Urban	18	79 972	4 443	-----
TOTAL		5 289	1 606 357	304	-----





WALIKALE Territory					
Collectivité	Groupe ment	Area (Km <sup>2</sup> )	Population	Density	Mwami
WANYANGA Sector	Bakusu	84	32 383	385	Kusu
	Banabangi	487	36 511	75	Nyanga
	Ihana	1 384	113 263	82	Nyanga
	Kisimba I	2 384	104 539	44	Nyanga
	Kisimba II/Bafuna	2 384	48 384	20	Nyanga
	Lubelike I	314	53 219	170	Nyanga
	Lubelike II/Ikobo	643	83 467	130	Bakobo
	Utunda I	4 320	88 560	21	Nyanga
	Utunda II/Wassa	2 975	138 147	46	Nyanga
	Usala	2 818	83 295	30	Nyanga
	Walowa- Uroba	344	58 680	171	Nyanga
	Walowa- Yungu	272	48 333	178	Nyanga
	Walowa- Loanda	1 277	86 586	68	Nyanga
Sub-Total	Total Wanyanga	19 686	975 367	50	-----
BAKANO Sector	Bakano	2 041	8 353	4	Kano
	Bakondjo	1 748	3 545	2	Kano
Sub-Total	Total Bakano	3 789	11 898	3	-----
Sub-Total	Total Rural Walikale	23 475	987 265	42	Kumu
Sub-Total	Total Urban Walikale	-	-	-	-----
TOTAL		23 475	987 265	42	-----



# Appendix D : Questionnaire 1

## I. Information sur le répondant

- 1) Localité de résidence : \_\_\_\_\_ Province \_\_\_\_\_
- 2) Affiliation(s) ethno-tribale(s) : \_\_\_\_\_
- 3) Langue maternelle et/ou paternelle : \_\_\_\_\_
- 4) Langues parlées à la maison : \_\_\_\_\_

## II. Activités économiques et accès à la terre

- 5) Quelles sont vos principales activités économiques?
  - a) Agriculture : \_\_\_\_\_
  - b) Élevage (petits animaux) : \_\_\_\_\_
  - c) Élevage (gros bétails) : \_\_\_\_\_
  - d) Foresterie : \_\_\_\_\_
  - e) Chasse ou pêche : \_\_\_\_\_
  - f) Artisanat : \_\_\_\_\_
  - g) Autre (décrivez) : \_\_\_\_\_
- 6) Comment est géré l'accès à la terre dans votre communauté (approximatif %)?
  - a) Terres coutumières : \_\_\_\_\_
  - b) Concessions privées : \_\_\_\_\_
  - c) Concessions publiques : \_\_\_\_\_
  - d) Location privée : \_\_\_\_\_
  - e) Location publique : \_\_\_\_\_
  - f) Occupation illégale : \_\_\_\_\_
  - g) Autre (décrivez) : \_\_\_\_\_
- 7) Quel est votre statut par rapport avec l'accès à la terre? Vous êtes :
  - a) Propriétaire unique : \_\_\_\_\_
  - b) Copropriétaire : \_\_\_\_\_
  - c) Locataire du privé : \_\_\_\_\_
  - d) Locataire du public : \_\_\_\_\_
  - e) Client coutumier : \_\_\_\_\_
  - f) Paysan sans terre : \_\_\_\_\_
  - g) Occupant illégal : \_\_\_\_\_
  - h) Travailleur salarié : \_\_\_\_\_
  - i) autre (décrivez) : \_\_\_\_\_
- 8) Si vous n'êtes pas propriétaire enregistré de la terre, est-ce que vous songez à le devenir? Et pourquoi? Oui \_\_\_\_\_ Non \_\_\_\_\_  
Expliquez : \_\_\_\_\_
- 9) Si vous songez être propriétaire enregistré et que vous ne l'êtes pas, quelles sont les raisons?
  - a) Le prix d'achat (de terre) est trop élevé? Oui \_\_\_\_\_ Non \_\_\_\_\_
  - b) Le prix de l'enregistrement du titre est trop élevé? Oui \_\_\_\_\_ Non \_\_\_\_\_
  - c) Les frais accessoires (frais techniques, d'inscription, de traduction, les voyages, les pots de vin, etc.) sont trop élevés? Oui \_\_\_\_\_ Non \_\_\_\_\_
  - d) Le processus d'enregistrement est trop complexe? Oui \_\_\_\_\_ Non \_\_\_\_\_
  - e) Vous manquez confiance dans le processus, les agences et/ou les agents responsables? Oui \_\_\_\_\_ Non \_\_\_\_\_
  - f) Expliquez votre réponse : \_\_\_\_\_



- 10) Quelle est la finalité des vos activités agricoles?  
 Autoconsommation (%)? \_\_\_\_\_ Vous êtes salarié (%)? \_\_\_\_\_  
 Vente (%)? \_\_\_\_\_ Autre: \_\_\_\_\_
- 11) Payez-vous des frais pour les terres que vous accédez? Oui \_\_\_\_\_ Non \_\_\_\_\_  
 s'il y a lieu, à qui payez-vous ces taxes, redevances, loyers ou d'autres frais?  
 a) Le chef coutumier (%)? \_\_\_\_\_ c) Le concessionnaire (%) \_\_\_\_\_  
 b) L'état (%) \_\_\_\_\_ d) Autre : \_\_\_\_\_
- 12) À combien d'hectares est-ce que votre ménage accède pour l'exploitation? \_\_\_\_\_
- 13) Accédez-vous à suffisamment de terres pour vos besoins? Oui \_\_\_\_\_ Non \_\_\_\_\_
- 14) Si votre dernière réponse a été « non », de quel ordre est le problème?  
 a) D'ordre individuel \_\_\_\_\_ b) D'ordre collectif \_\_\_\_\_
- 15) Si le problème est d'ordre collectif, quelles sont les raisons pour le manque de terres?  
 a) Il n'y a simplement pas assez de terres pour la population dans la région \_\_\_\_\_  
 b) C'est d'abord un problème politique lié au système foncier \_\_\_\_\_
- 16) Si vous pensez que le problème principal reste dans le système foncier, SVP précisez:  
 a) Le système foncier est flou et il se prête à la manipulation \_\_\_\_\_  
 b) Le système profite aux élites politiques au détriment des paysans \_\_\_\_\_  
 c) Le système profite aux élites du secteur privé au détriment des paysans \_\_\_\_\_  
 d) Le système profite aux élites coutumières au détriment des paysans \_\_\_\_\_  
 e) Le système profite certaines communautés au détriment des autres \_\_\_\_\_  
 f) Il y a d'autres raisons (spécifiez) : \_\_\_\_\_  
 SVP, expliquez vos réponses : \_\_\_\_\_
- 17) Pensez-vous que votre communauté est désavantagée dans les compétitions pour  
 l'accès à la terre? Oui \_\_\_\_\_ Non \_\_\_\_\_  
 Le désavantage est par rapport à qui? SVP, expliquez votre réponse : \_\_\_\_\_
- 18) Qu'est-ce que la propriété ou le droit d'accès à la terre signifie pour vous :  
 a) L'actif économique le plus important à posséder \_\_\_\_\_  
 b) Un investissement dans l'avenir de ma famille et les générations futures \_\_\_\_\_  
 c) Un statut social au sein de ma communauté \_\_\_\_\_  
 d) Un lien social entre moi, ma famille et notre communauté ethno-tribale \_\_\_\_\_  
 e) Un lien spirituel entre moi, ma famille et nos ancêtres \_\_\_\_\_  
 f) Autre (décrivez) : \_\_\_\_\_
- 19) Selon vous, qui est le propriétaire ultime de la terre que vous accédez :  
 a) L'état (RDC) \_\_\_\_\_ d) Le mwami \_\_\_\_\_  
 b) Le peuple congolais \_\_\_\_\_ e) La tribu \_\_\_\_\_  
 c) Le concessionnaire \_\_\_\_\_
- 20) D'après vous, comment devrait être réglé l'accès à la terre en RDC?

- a) Propriété privée, à accéder via achat ou location? Oui \_\_\_\_\_ Non \_\_\_\_\_
- b) Propriété étatique, accès via location individuelle? Oui \_\_\_\_\_ Non \_\_\_\_\_
- c) Propriété étatique, gérée en commun par les communautés ethno-tribales? Oui \_\_\_\_\_ Non \_\_\_\_\_
- d) Propriété coutumière, accès via système coutumier? Oui \_\_\_\_\_ Non \_\_\_\_\_
- e) Constellation actuelle avec trois domaines : i) publique, ii) privé et iii) coutumier? Oui \_\_\_\_\_ Non \_\_\_\_\_
- f) Autre (SVP expliquez): \_\_\_\_\_

### **III. Expérience de litige autour de la terre et accès aux institutions**

- 21) Avez-vous ou votre ménage déjà été parti prenante d'un litige ou d'un conflit en rapport avec l'accès à la terre? Oui \_\_\_\_\_ Non \_\_\_\_\_
- 22) Est-ce que la contrepartie du litige ou conflit foncier appartenait à la même communauté ethno-tribale que vous? Oui \_\_\_\_\_ Non \_\_\_\_\_
- 23) Est-ce que ce litige ou conflit a été...
- a) ... jugé ou arbitré par les autorités de l'état? Oui \_\_\_\_\_ Non \_\_\_\_\_
- b) ... résolu par les autorités de l'état? Oui \_\_\_\_\_ Non \_\_\_\_\_
- c) ... jugé ou arbitré par les autorités coutumières? Oui \_\_\_\_\_ Non \_\_\_\_\_
- d) ... résolu par les autorités coutumières? Oui \_\_\_\_\_ Non \_\_\_\_\_
- e) Est-ce que ce litige reste non-résolu (dormant ou actif)? Oui \_\_\_\_\_ Non \_\_\_\_\_
- 24) Quels étaient les enjeux principaux de ce litige ou dispute?
- a) Litige de succession entre particuliers : \_\_\_\_\_
- b) Litige de succession entre familles de chefs coutumiers : \_\_\_\_\_
- c) Litige autour de la délimitation de parcelle : \_\_\_\_\_
- d) Litige autour de la légitimité de titres, contrats et/ou ententes, etc. : \_\_\_\_\_
- e) Litige autour du paiement de taxes ou de redevances: \_\_\_\_\_
- f) Litige autour l'utilisation du sol (e.g. entre cultivateurs & pasteurs) : \_\_\_\_\_
- g) Litige impliquant l'occupation ambiguë, illégale et/ou par force : \_\_\_\_\_
- h) Litige impliquant la spoliation : \_\_\_\_\_
- 25) Quels facteurs sont les plus importants dans l'évolution de litiges fonciers au Nord-Kivu (cochez 1 ou 2 réponses):
- a) La faiblesse du système foncier (formel) et l'ambiguïté de ses lois : \_\_\_\_\_
- b) Le manque de capacité et/ ou d'intégrité des autorités coutumières: \_\_\_\_\_
- c) Le manque de capacité et/ ou d'intégrité des administrations de l'état : \_\_\_\_\_
- d) Le non respect de la coutume par certains individus et/ ou communautés : \_\_\_\_\_
- e) Le non respect de la loi foncière par certaines autorités coutumières : \_\_\_\_\_
- f) Autres facteurs importants (SVP expliquez) : \_\_\_\_\_
- 26) Quelles institutions sont responsables de prendre des décisions, faire des jugements



et/ou des médiations s'il y a litige autour de votre terre?

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- 27) Est-ce que les institutions énumérées dans la réponse précédente sont faciles à accéder et avez-vous confiance en leur intégrité? Oui \_\_\_\_\_ Non \_\_\_\_\_  
Expliquez : \_\_\_\_\_
- 28) Avez-vous confiance aux institutions coutumières pour la résolution de litiges et de conflits fonciers? Oui \_\_\_\_\_ Non \_\_\_\_\_
- 29) Avez-vous confiance aux institutions de l'état central pour la résolution de litiges et de conflits? Oui \_\_\_\_\_ Non \_\_\_\_\_

#### IV. Expérience de conflit autour de la terre

- 30) Non applicable
- 31) Avez-vous déjà été partie prenante, victime ou autrement sérieusement affecté par un conflit foncier violent? Oui \_\_\_\_\_ Non \_\_\_\_\_
- 32) Avez-vous déjà été partie prenante, victime ou autrement sérieusement affecté par un conflit foncier interethnique? Oui \_\_\_\_\_ Non \_\_\_\_\_
- 33) Non applicable
- 34) Si votre dernière réponse à la question 32 est « oui », quelles étaient les communautés impliquées?  
a) \_\_\_\_\_ c) \_\_\_\_\_  
b) \_\_\_\_\_ d) \_\_\_\_\_
- 35) Quelle était la constellation de départ ce conflit (cochez une réponses)?  
a) Conflit entre autorités coutumières : \_\_\_\_\_  
b) Conflit entre autorités coutumières et des paysans : \_\_\_\_\_  
c) Conflit entre autorités coutumières et concessionnaires : \_\_\_\_\_  
d) Conflit entre paysans : \_\_\_\_\_  
e) Conflit entre concessionnaires : \_\_\_\_\_  
f) Conflit entre concessionnaires et paysans : \_\_\_\_\_  
g) Autres constellations ou facteurs importants : \_\_\_\_\_
- 36) Non applicable
- 37) Est-ce qu'il y avait un ou des groupes armés impliqués dans ce conflit?  
Oui \_\_\_\_\_ Non \_\_\_\_\_  
Lesquels? \_\_\_\_\_  
\_\_\_\_\_

#### V. État de droit et sécurité physique

- 38) Non applicable



- 39) Non applicable
- 40) S'il y a lieu, par qui ou quel(s) groupe(s) vous sentez-vous menacé?
- a) Des militaires congolais? Oui \_\_\_\_\_ Non \_\_\_\_\_
- b) Des groupes rebelles ou les milices ethniques ou tribales Oui \_\_\_\_\_ Non \_\_\_\_\_
- c) Des ressortissants d'une communauté ethnique particulière? Oui \_\_\_\_\_ Non \_\_\_\_\_
- d) D'autres acteurs (décrivez) :
- 41) Selon vous, est-ce qu'un ou plusieurs des groupes armés énumérés ci-haut jouent des rôles actifs dans les conflits fonciers de votre région? Oui \_\_\_\_\_ Non \_\_\_\_\_
- Lesquels? \_\_\_\_\_
- Expliquez : \_\_\_\_\_

## VI. Appartenance socio-identitaire, terre, tribu, nationalité, citoyenneté

- 42) Indiquez l'importance que vous accordez à votre identification avec ces concepts :  
(De 1 à 4) :                      1 = la plus importante                      4 = la moins importante
- La terre \_\_\_\_\_ L'ethnie/tribu \_\_\_\_\_ La nation \_\_\_\_\_ Le pays \_\_\_\_\_
- 43) Non applicable

## VII. Questions politiques d'actualité

- 44) Pensez-vous que la formalisation de l'administration de la RDC devrait se continuer jusqu'aux plus petits niveaux administratifs, remplaçant les chefs coutumiers par des autorités directement élues ou déléguées par l'état central? Oui \_\_\_\_\_ Non \_\_\_\_\_
- 45) D'après vous, comment devrait être légiférée la question de la citoyenneté en RDC?
- a) Naturalisation collective des immigrés déjà au pays, mais naturalisation individuelle pour les nouveaux arrivés? Oui \_\_\_\_\_ Non \_\_\_\_\_
- b) Application de la constitution du décembre 2005; c.-à-d. naturalisation individuelle des immigrés d'après 1960? Oui \_\_\_\_\_ Non \_\_\_\_\_
- c) Retour à la loi n° 81-002; c.-à-d. accord de la citoyenneté uniquement aux personnes qui tracent leurs origines tribales jusqu'à la date de 1885 sur le territoire de la RDC présente? Oui \_\_\_\_\_ Non \_\_\_\_\_

Notes & Commentaires :

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## Appendix E : Questionnaire 2

### I. Information générale

- 1) Âge du répondant: \_\_\_\_\_
- 2) Sexe du répondant (M/F): \_\_\_\_\_
- 3) Localité de Résidence: \_\_\_\_\_ Province \_\_\_\_\_

### II. Information sur la Langue et Affiliation Ethno-Tribale

- 4) Affiliation(s) ethno-tribale(s): \_\_\_\_\_
- 5) Langue(s) maternelle/ paternelle: \_\_\_\_\_
- 6) Langue(s) parlée(s) à la maison: \_\_\_\_\_
- 7) Langue(s) parlée(s) au travail : \_\_\_\_\_
- 8) Écrivez-vous:      Le Swahili?      Oui \_\_\_\_\_ Non \_\_\_\_\_  
   Le Français?      Oui \_\_\_\_\_ Non \_\_\_\_\_

### III. Informations socioéconomiques: scolarisation

- 9) Scolarisation:
  - a) Avez-vous été à l'école?      Oui \_\_\_\_\_ Non \_\_\_\_\_
  - b) Si oui, quelle est la dernière année que vous avez fréquentée? \_\_\_\_\_
  - c) Avez-vous eu une formation pratique?      Oui \_\_\_\_\_ Non \_\_\_\_\_  
Si "oui", dans quel domaine? \_\_\_\_\_
  - d) Avez-vous eu une formation universitaire?      Oui \_\_\_\_\_ Non \_\_\_\_\_  
Si "oui", dans quel domaine? \_\_\_\_\_

### IV. Informations socioéconomiques: activités et environnements économiques

- 10) Quelles sont les principales utilisations de la terre dans votre localité?
  - a) Agriculture :      Oui \_\_\_\_\_ Non \_\_\_\_\_
  - b) Pâturage (petits bétails)      Oui \_\_\_\_\_ Non \_\_\_\_\_
  - c) Pâturage (gros bétails)      Oui \_\_\_\_\_ Non \_\_\_\_\_
  - d) Foresterie commerciale      Oui \_\_\_\_\_ Non \_\_\_\_\_
  - e) Foresterie communautaire/ bois pour le feu      Oui \_\_\_\_\_ Non \_\_\_\_\_
  - f) Pêche et/ ou chasse      Oui \_\_\_\_\_ Non \_\_\_\_\_
  - g) Autres (décrivez) \_\_\_\_\_
- 11) Comment est gérée l'accès à la terre dans votre localité: qui contrôle l'accès à la terre?

- a) Domaine coutumier (autorités coutumières, système de redevances, etc.)  
Oui \_\_\_\_\_ Non \_\_\_\_\_
- b) Domaine privé (titres aliénables, concessions privées)  
Oui \_\_\_\_\_ Non \_\_\_\_\_
- c) Domaine de l'état (concessions publiques, location de l'état)?  
Oui \_\_\_\_\_ Non \_\_\_\_\_
- d) Occupation illégale/ non-organisé (squatteur)?  
Oui \_\_\_\_\_ Non \_\_\_\_\_
- e) Autres (décrivez) \_\_\_\_\_

12) De quelle (s) manière(s) accédez-vous à la terre? Vous êtes:

- a) Propriétaire unique  
Oui \_\_\_\_\_ Non \_\_\_\_\_
- b) Membre d'une coopération propriétaire  
Oui \_\_\_\_\_ Non \_\_\_\_\_
- c) Client/ paysan dans le système coutumier  
Oui \_\_\_\_\_ Non \_\_\_\_\_
- d) Locataire  
Oui \_\_\_\_\_ Non \_\_\_\_\_
- e) Travailleur agricole salarié  
Oui \_\_\_\_\_ Non \_\_\_\_\_
- f) Autre (décrivez) : \_\_\_\_\_

13) Quelles sont vos principales activités économiques?

- a) Agriculture :  
Oui \_\_\_\_\_ Non \_\_\_\_\_
- b) Élevage de petits bétails :  
Oui \_\_\_\_\_ Non \_\_\_\_\_
- c) Élevage de gros bétails :  
Oui \_\_\_\_\_ Non \_\_\_\_\_
- d) Pêche et/ ou chasse:  
Oui \_\_\_\_\_ Non \_\_\_\_\_

e) Autres (décrivez) \_\_\_\_\_

14) À combien d'hectares est-ce que votre ménage a accès pour l'exploitation?  
\_\_\_\_\_ ha

15) Avez-vous accès à suffisamment de terre pour nourrir votre famille?

Oui \_\_\_\_\_ Non \_\_\_\_\_

16) Est-ce que la situation (accès à la terre) s'est améliorée ou empirée à travers les dernières 20 années?

Empirée? Oui \_\_\_\_\_ Non \_\_\_\_\_

Améliorée? Oui \_\_\_\_\_ Non \_\_\_\_\_

## V. Informations socioéconomiques: litiges, conflits et accès aux institutions

17) Sur une échelle de « 0 » à « 10 » évaluez votre accès aux terres cultivables et/ ou de pâturages dans le système coutumier (« 0 » signifie pas d'accès; « 5 » moyen accès; « 10 » très bon accès, etc.). Cochez ou encerclez votre réponse!

0      1      2      3      4      5      6      7      8      9      10

18) Si vous n'accédez pas facilement aux terres coutumières, quelles en sont les raisons?

a) Il n'y a simplement pas assez de terre agricole au Kivu.

Oui \_\_\_\_\_ Non \_\_\_\_\_

b) Il ne reste plus assez de terres dans le domaine coutumier (la terre a été vendue)

Oui \_\_\_\_\_ Non \_\_\_\_\_

c) Le système foncier coutumier favorise la tribu du mwami et vous appartenez à un autre groupe ethno-tribal

Oui \_\_\_\_\_ Non \_\_\_\_\_

d) Autres (expliquez) \_\_\_\_\_  
\_\_\_\_\_

19) Sur une échelle de « 0 » à « 10 » évaluez votre accès aux terres cultivables et/ ou de pâturages dans les marchés commerciaux (« 0 » signifie pas d'accès; « 5 » moyen accès; « 10 » très bon accès, etc.). Cochez ou encerclez votre réponse!

0      1      2      3      4      5      6      7      8      9      10

20) Si vous n'accédez pas facilement aux terres commerciales, quelles en sont les raisons?

a) Le prix d'achat (de terre) est trop élevé?

Oui \_\_\_\_\_ Non \_\_\_\_\_

b) Le prix du transfert (*domanialisation*) et de l'enregistrement du titre est trop élevé?

Oui \_\_\_\_\_ Non \_\_\_\_\_

c) Vous n'avez pas accès aux institutions pour le transfert et l'enregistrement?

Oui \_\_\_\_\_ Non \_\_\_\_\_

d) Autres (expliquez) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

21) Si vous n'êtes pas propriétaire enregistré de terre, est-ce que vous songez à le devenir?

Oui \_\_\_\_\_ Non \_\_\_\_\_

22) Connaissez-vous les étapes à suivre dans le processus d'enregistrement d'un titre sur un lot de terre?

Oui \_\_\_\_\_ Non \_\_\_\_\_

23) Connaissez-vous les étapes à suivre dans le processus de contestation d'un enregistrement de terre par une partie tierce qui empiète sur vos droits?

Oui \_\_\_\_\_ Non \_\_\_\_\_

24) Pensez-vous que vous et/ou votre communauté êtes désavantagés dans les compétitions pour l'accès à la terre dans le Kivu rural?

Oui \_\_\_\_\_ Non \_\_\_\_\_

25) Si vous le pensez, quelles en sont les raisons? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

26) Avez-vous et/ ou votre famille déjà été partie prenante d'un litige en rapport avec l'accès à la terre? Oui \_\_\_\_\_ Non \_\_\_\_\_

27) Quelle(s) institution(s) est/sont responsable(s) de prendre des décisions et/ou de faire des jugements s'il y a litige autour de la terre dans votre communauté?  
\_\_\_\_\_  
\_\_\_\_\_

28) Sur une échelle de « 0 » à « 10 » évaluez votre accès aux institutions coutumières de résolution de litige foncier (« 0 » signifie pas d'accès; « 5 » moyen accès; « 10 » très bon accès, etc.). Cochez ou encerclez la réponse!

0      1      2      3      4      5      6      7      8      9      10

29) Si vous trouvez l'accès aux institutions coutumières difficile, quelles en sont les raisons?

a) Est-ce que les tribunaux coutumiers facilitent la résolution de litiges?  
Oui \_\_\_\_\_ Non \_\_\_\_\_

b) Êtes-vous méfiant de l'impartialité des tribunaux? Oui \_\_\_\_\_ Non \_\_\_\_\_

b) Est-ce que l'appartenance ethno-tribale détermine l'accès au cours?  
Oui \_\_\_\_\_ Non \_\_\_\_\_

c) Est-ce que la langue parlée au cours du mwami constitue un obstacle?  
Oui \_\_\_\_\_ Non \_\_\_\_\_

d) Autres (expliquez) \_\_\_\_\_

30) Sur une échelle de « 0 » à « 10 » évaluez votre accès aux institutions étatiques (cour, tribunal) de résolution de litige foncier (« 0 » signifie pas d'accès; « 5 » moyen accès; « 10 » très bon accès, etc.). Cochez ou encerclez la réponse!

0      1      2      3      4      5      6      7      8      9      10

31) Si vous trouvez l'accès aux institutions de l'état difficile, quelles sont les raisons?

a) Distance et infrastructures: la cour est loin? Oui \_\_\_\_\_ Non \_\_\_\_\_

b) Question d'argent : les frais légaux sont élevés? Oui \_\_\_\_\_ Non \_\_\_\_\_

c) Vous êtes méfiant de leur impartialité? Oui \_\_\_\_\_ Non \_\_\_\_\_

d) Question de la maîtrise de la langue utilisée en cour? Oui \_\_\_\_\_ Non \_\_\_\_\_

e) Autre (expliquez) \_\_\_\_\_

32) Y a-t-il eu des conflits violents en rapport avec l'accès à la terre à l'intérieur de votre communauté? Oui \_\_\_\_\_ Non \_\_\_\_\_

33) Y a-t-il eu des conflits violents en rapport avec l'accès à la terre entre votre communauté et une autre communauté? Oui \_\_\_\_\_ Non \_\_\_\_\_

34) Quels étaient les protagonistes et/ou communautés impliquées?

a) \_\_\_\_\_ b) \_\_\_\_\_

c) \_\_\_\_\_ d) \_\_\_\_\_

35) D'après vous, quel rôle joue l'accès à la terre dans l'interaction des communautés ethniques au Kivu? (Expliquez) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

36) D'après vous, comment devrait être réglé l'accès à la terre en RDC?

a) Propriété privée, propriété et location? Oui \_\_\_\_\_ Non \_\_\_\_\_

b) Propriété coutumière, redevance? Oui \_\_\_\_\_ Non \_\_\_\_\_

c) Propriété étatique, location? Oui \_\_\_\_\_ Non \_\_\_\_\_

d) Autres : \_\_\_\_\_

Expliquez comment et pourquoi: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_